

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Claire Howard,

Complainant

against

Docket #FIC 2020-0054

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

Respondents

March 23, 2022

The above-captioned matter was heard as a contested case on February 19, 2021 and November 1, 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 the Governor's Executive Order 7B (Mar. 14, 2020), which suspended the requirement to conduct public meetings in person and pursuant to §149 of Public Act 21-2 (June Spec. Sess.), respectively.

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 letter dated January 17, 2020, the complainant requested that the respondents provide her with copies of the following records:
  - a. All documents, including, but not limited to, meeting minutes, memos, notes, statements, e-mails, text messages or other correspondence sent to and/or received by Lorraine Vittner, Kristen Pepin, Joseph Olender, Irena Baj-Wright, and Brenda Abele referring to or mentioning Karen Bosse from October 1, 2015 through the date of this letter;
  - b. Copies of registrations for trainings, workshops, seminars or conferences for Susan Shelland, Sidney

Yeung, Irene Matulis, Karen Bosse, James Amato from October 2015 through the date of this letter;

- c. Copies of Teleworking Agreements and/or Teleworking Requests submitted by Susan Shellard, Sidney Yeung, Irene Matulis, Karen Bosse and James Amato from October 2015 through the date of this letter;
- d. Copies of Interim and Annual Performance Reviews for Susan Shellard, Sidney Yeung, Irene Matulis, Karen Bosse and James Amato from October 2015 through the date of this letter; and
- e. Copies of Service Ratings for Susan Shellard, Sidney Yeung, Irene Matulis, Karen Bosse and James Amato from October 2015 through the date of this letter.

3. It is found that, by email dated January 21, 2020, the respondents acknowledged the request.

4. By email dated and filed January 31, 2020<sup>1</sup>, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with the requested records.

5. 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.<sup>2</sup>

6. Section 1-210(a), G.S., provides in relevant part that:

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<sup>1</sup> 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 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, through June 30, 2021. Consequently, the Commission retains jurisdiction over this matter.

<sup>2</sup> 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.”

[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, (2) copy such records in accordance with subsection (g) of section 1-212, or (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 found that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that, at the time of the first contested case hearing, the complainant had not received any records responsive to her request.

10. At the hearing, counsel for the respondents indicated that he had not had a chance to evaluate this case, and the respondents presented no evidence at this hearing. However, counsel for the respondents represented that he believed that he “could get most of this stuff” to the complainant.

11. The contested case hearing was continued so that the respondents could review this matter, gather the responsive records, disclose to the complainant all records for which an exemption was not being claimed, and prepare their evidence for the next hearing.

12. At the second contested case hearing, counsel for the respondents appeared and indicated that he believed that the records responsive to requests 2.a through 2.c, above, could be exempt from mandatory disclosure pursuant to § 1-210(b)(4), G.S. (records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party). However, counsel appeared at the second contested case hearing without witnesses and did not present any evidence.

13. It is found that, at the time of the second hearing, the complainant still had not received any responsive records.

14. At the conclusion of the second contested case hearing, the hearing officer requested that the respondents prepare an affidavit regarding whether the individuals listed in paragraphs 2.d and 2.e, above, are classified service employees.

15. “Classified service” means “every office or position in the state service, whether full-time or part-time, for which compensation is paid, except those offices and

positions specified in section 5-198 or otherwise expressly provided by statute.” See Conn. Gen. Stat. § 5-196.

16. It is found that, on November 16, 2021, counsel for the respondents filed the requested affidavit with the Commission.<sup>3</sup>

17. Based on the respondents’ affidavit, it is found that all of the individuals listed in paragraph 2.d and 2.e, above, are classified service employees.

18. Section 5-237, G.S., provides, in relevant part, that:

Any employee in the classified service shall have the right, at reasonable times during office hours, to inspect his service ratings, as shown by the records of the Department of Administrative Services or of the department, agency or institution in which such employee is employed. . . .  
(Emphasis supplied).

19. In Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312, 320-21 (1990), the Supreme Court concluded that §5-237, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S., and specifically limits access to an employee’s service rating to the employee who is the subject of such rating.

20. It is found that a classified service employee’s performance review is part of his or her “service rating.” See, e.g. John v. Richard Blumenthal, Attorney General, State of Connecticut, Office of the Attorney General, et al., Docket #FIC 2000-557 (June 13, 2001).

21. It is therefore concluded that the records responsive to the requests in paragraphs 2.d and 2.e, above, are exempt from mandatory disclosure pursuant to §5-237, G.S., and that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such records from the complainant.

22. It is found, however, that the respondents failed to prove that the records responsive to requests 2.a through 2.c., above, are exempt from mandatory disclosure.

23. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the records responsive to requests 2.a through 2.c, above, from the complainant.

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

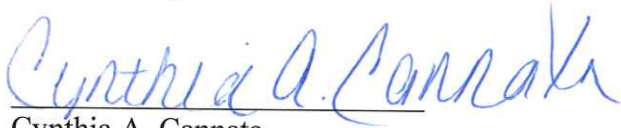
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<sup>3</sup> The affidavit has been marked as the respondents’ post-hearing Ex. 1.

1. Within 14 days of the Notice of Final Decision, the respondents shall disclose to the complainant a copy of all of the records responsive to requests 2.a through 2.c, above, free of charge, and without redactions.

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 March 23, 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:

**CLAIRE HOWARD**, Madsen, Prestley & Parenteau, LLC, 402 Asylum Street, Hartford, CT 06103

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES; AND STATE OF CONNECTICUT, DEPARTMENT OF ADMINISTRATIVE SERVICES**, c/o Attorney Michael Barrera, State of Connecticut, Department of Administrative Services, 450 Columbus Boulevard, Hartford, CT 06103



Cynthia A. Cannata  
Acting Clerk of the Commission