

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joshua Esses,

Complainant

against

Docket # FIC 2020-0362

David Desjardins, Counsel, State of Connecticut, General Assembly, House of Representatives; Richard Price, Legislative Aide to Representative Blumenthal, State of Connecticut, General Assembly, House of Representatives; Giovanni Pinto, Legislative Aide to Representative Simmons, State of Connecticut, General Assembly, House of Representatives; Alberto Negron, Legislative Aide to Representative Meskers, State of Connecticut, General Assembly, House of Representatives; Desmond Conner, Legislative Aide to Representative Miller, State of Connecticut, General Assembly, House of Representatives; and State of Connecticut, General Assembly, House of Representatives,

Respondents

March 23, 2022

The above-captioned matter was heard as a contested case on October 1, 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 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 5, 2020, the complainant requested that the respondents provide him with a copy of "(a) email addresses used for email "blasts" for each of

the following representatives and their respective districts and (b) all constituent contacts for each of the foregoing representatives and their respective districts.”<sup>1</sup>

3. It is found that the records described in paragraph 2, above, are maintained by the respondents in a computerized constituent contact database.

4. By letter of complaint filed August 3, 2020,<sup>2</sup> the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for the records described in paragraph 2, above.

5. It is found that on September 20, 2020, after the complaint in this matter was filed, the respondents disclosed the names and addresses contained within the constituent contact database but withheld all of the email addresses in such database. The respondents contended that the email addresses were not public records and therefore not subject to disclosure.

6. At the time of the complaint, §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>3</sup>

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 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

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<sup>1</sup> The request at issue was directed to the state representatives named as respondents in this matter.

<sup>2</sup> 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 and requires any person denied any right conferred by the FOI Act to appeal not later than thirty days after such denial. 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.

<sup>3</sup> Public Act 21-2 (June Sp. Sess.) amended §1-200(5), G.S., to add the word “videotaped” to the definition of public records or files. Such amendment was effective June 23, 2021.

any public record.”

9. Section 1-211(a), G.S., provides in relevant part that:

[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made.

10. In support of their claim that the requested email addresses are not public records, the respondents cited FOIC Declaratory Ruling #90. Declaratory Ruling #90 clarified the extent to which the FOI Act applies to correspondence from constituents sent to members of the General Assembly. It concludes that correspondence received by a legislator that relates directly or indirectly to enacting legislation or making laws constitutes information relating to the public’s business and, therefore, falls within the definition of a public record. The Ruling concludes, conversely, that correspondence relating to personal matters does not relate to legislation or law-making, and therefore does not constitute a public record.

11. Next, the respondents cited the final decisions in Docket #FIC 2013-194, David Godbout v. Anthony Guglielmo and Kevin Witkos, as members, State of Connecticut, Connecticut State Senate (March 12, 2014), and Docket #FIC 2016-0483, Anna Neumon v. Dante Bartolomeo, Member, State of Connecticut, State Senate (April 26, 2017).

12. In Godbout, the Commission ultimately concluded that because the correspondence associated with the email addresses did not pertain to the legislator’s role as lawmaker, that such email addresses were not public records and therefore not subject to disclosure. While in Neumon, the Commission determined that the email addresses were public records as such email addresses were provided intentionally and voluntarily by subscribers to an electronic newsletter published by Bartolomeo.

13. The respondents contended that when read together, Godbout and Neumon stand for the proposition that even when constituents have interacted with their legislator on matters related to enacting legislation or making laws, their email addresses are not public records unless it is clear that they knowingly and voluntarily provided those email addresses to their legislator for the purpose of receiving future legislative updates via an email newsletter.

14. However, the Commission disagrees. In both Godbout and Neumon there were specific facts with regard to the origin of the email addresses and the email addresses in question could be linked to a specific purpose for which they were provided. However, the respondents’ witness testified, and it is found, that the constituent contact database is comprised of various data, including email addresses from various sources and that such data is not connected or otherwise associated with any particular correspondence.

15. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

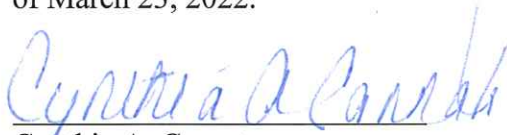
16. Accordingly, it is concluded that the respondents violated §§1-210(a), 1-211(a) and 1-212(a), G.S., when they refused to disclose the email addresses as requested by the complainant.

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 the email addresses as requested by the complainant at no charge.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a), 1-211(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:

**JOSHUA ESSES**, 500 Newfield Avenue, #3F, Stamford, CT 06905

**DAVID DESJARDINS, COUNSEL, STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES; RICHARD PRICE, LEGISLATIVE AIDE TO REPRESENTATIVE BLUMENTHAL, STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES; GIOVANNI PINTO, LEGISLATIVE AIDE TO REPRESENTATIVE SIMMONS, STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES; ALBERTO NEGRON, LEGISLATIVE AIDE TO REPRESENTATIVE MESKERS, STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES; DESMOND CONNER, LEGISLATIVE AIDE TO REPRESENTATIVE MILLER, STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES; AND STATE OF CONNECTICUT, GENERAL ASSEMBLY, HOUSE OF REPRESENTATIVES**, c/o Assistant Attorney General Alma R. Nunley, State of Connecticut, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission