

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Helene Byrne,

Complainant

against

Docket #FIC 2021-0415

Administrator, State of Connecticut,
Office of the Chief Medical Examiner;
and State of Connecticut, Office of
the Chief Medical Examiner,

Respondents

May 11, 2022

The above-captioned matter was heard as a contested case on January 14, 2022, at which time 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 letter dated July 7, 2021, the complainant requested that the respondents provide her with copies of records pertaining to her brother, decedent John L. Byrne, as follows:
 - a. Report of investigation including chain of custody of the body including date OCME¹ released the body and to whom;
 - b. Receipt of evidence and any personal effects of the decedent;
 - c. Funeral home information and communications – any and all emails, faxes, phone logs/notes, letters, forms

¹ "OCME" is an acronym for the Office of the Chief Medical Examiner.

and other communications from or to any funeral home regarding the deposal (sic) and transfer of decedent's remains. Include all forms/paperwork/files regarding Luke DiMaria/Abbey Cremation Services from December 1, 2019 through July 31, 2020;

- d. A copy of all faxes, emails, and letters received and sent regarding the decedent from Kathryn L. Braun, Attorney at Law, 79 South Benson Road, Fairfield, CT 06824;
- e. A copy of all emails, faxes, phone logs/notes and letters received and sent regarding the decedent between executive secretary Linda Silvia (sic) and Supervising Special Investigator Christina Schock from 3/30/2020 to the present;
- f. A full and detailed account of all steps taken by Supervising Special Investigator Christina Schock and/or any other OCME staff to locate the next of kin;
- g. A copy of the investigation report into the next of kin; and
- h. A full statement of standard procedures and protocols regarding how OCME locates next of kin in cases where the decedent dies alone in his residence of natural causes.

3. By email dated July 26, 2021, and filed July 27, 2021, the complainant appealed to this Commission, alleging that the respondents had violated the Freedom of Information ("FOI") Act by failing to provide her with the requested records.

4. Section 1-200(5), G.S., provides:

"[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, videotaped, printed, photostated, photographed or recorded by any other method.

5. 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, (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.

6. 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.”

7. 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.

8. It is found that the request set forth in paragraph 2, above, is the complainant’s second request for records from the respondents, as she had previously made an initial request for similar records on January 8, 2021. It is found that, in response to her first request, the respondents disclosed some, but not all, responsive records. At the hearing, the complainant contended that she believed that the respondents should have more records responsive to the instant request.

9. The respondents contended that, to the best of their knowledge, they had disclosed all responsive records in their possession to the complainant, without redactions.

10. Executive Secretary Linda Sylvia appeared at the contested case hearing and testified on behalf of the respondents.

11. It is found that one of Ms. Sylvia’s responsibilities at the respondent agency is responding to FOI requests.

12. It found that, when a request for public records is received at the OCME, Ms. Sylvia reviews the request and contacts Ms. Laura Beloin in the OCME’s Department of Medical Records (the “department”). It is found that Ms. Sylvia, with the assistance of Ms. Beloin, retrieves the relevant file from the department. Thereafter, it is found that Ms. Sylvia reviews the file with Ms. Beloin, compiles the responsive records, invoices the requester, and, once the fee is received, Ms. Sylvia forwards the requested records to the requester.

13. It is found that the procedure outlined in paragraph 12, above, is the procedure that was followed in this case.

14. It is found that, regarding the request set forth in paragraph 2.a, above, the respondents forwarded one responsive record to the complainant in response to her first request for records. It is found that the respondents do not maintain any additional responsive records. It is found that, regarding the request set forth in paragraph 2.b, above, the respondents do not maintain any responsive records. It is found that, regarding the request set forth in paragraph 2.c, above, the respondents forwarded their communications with the funeral home to the complainant in response to her first request for records. It is found that the respondents do not maintain any additional responsive records. It is found that, regarding the request set forth in paragraph 2.d, above, the respondents forwarded the responsive records in their possession to the complainant in response to her first request for records. It is found that the respondents do not maintain any additional responsive records. It is found that, regarding the request set forth in paragraph 2.e, above, the respondents disclosed all responsive records to the complainant on January 6, 2022. It is found that the respondents do not maintain any additional responsive records. It is found that, regarding the request set forth in paragraph 2.f, above, the respondents forwarded the responsive records in their possession to the complainant in response to her first request for records. It is found that the respondents do not maintain any additional responsive records. It is found that, regarding the requests set forth in paragraphs 2.g and 2.h, above, the respondents do not maintain any responsive records.

15. At the hearing, the complainant challenged the respondents' testimony with regard to the records in the respondents' possession that are responsive to how the OCME locates a decedent's next of kin. See ¶¶ 2.f, 2.g, and 2.h, above.

16. At the conclusion of the hearing, the hearing officer ordered the respondents to submit an affidavit from Christina Schock, Supervisory Special Investigator of the OCME, detailing what steps were taken to locate the decedent's next of kin in this case, whether records were generated in connection with efforts to locate the decedent's next of kin in this case, and whether the OCME maintains written procedures and/or protocols for locating a decedent's next of kin.

17. On January 21, 2022, the respondents submitted the affidavit of Supervisory Special Investigator Schock. The affidavit has been marked as respondents' post-hearing Ex. 6.

18. Based on the affidavit, it is found that no written investigation report into the decedent's next of kin exists in this case. It is further found that all steps taken by Special Investigator Schock to locate the decedent's next of kin are reflected in the Telephonic Notice of Death. Finally, it is found that, as she prepared her affidavit, Special Investigator Schock located two additional documents that had not previously been disclosed to the complainant. Specifically, it is found that Special Investigator Schock located the OCME's "Procedure for Making Arrangements for Unclaimed Decedents" and the "Telephonic Notice of Death." It is found that these two documents were disclosed to the complainant on January 19, 2022.

19. Regarding the disclosure of the two records referred to in paragraph 18, above, it is found that the respondents have disclosed to the complainant all responsive records in their possession without redactions.

20. Finally, the complainant contended that the respondents did not disclose all of the responsive records to her in a prompt manner--particularly the records that were disclosed to her on January 6, 2022 (see ¶ 14, above) and on January 19, 2022 (see ¶ 18, above).

21. With regard to promptness, 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.

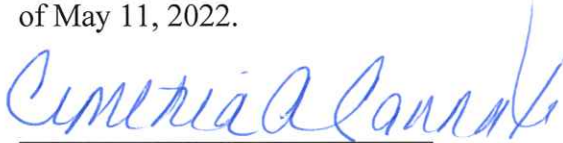
22. The respondents conceded that they did not provide all of the responsive records to the complainant in a prompt manner.

23. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 11, 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:

HELENE BYRNE, 2452 Delmer Street, Oakland, CA 94602

ADMINISTRATOR, STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER; AND STATE OF CONNECTICUT, OFFICE OF THE CHIEF MEDICAL EXAMINER, c/o Assistant Attorney General Elizabeth Bannon, State of Connecticut, Office of the Attorney General, 165 Capitol Avenue, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission