

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Nancy Burton,

Complainant

against

Docket # FIC 2021-0333

Commissioner, State of Connecticut,
Department of Agriculture; and State of
Connecticut, Department of Agriculture,

Respondents

September 28, 2022

The above-captioned matter was heard as a contested case on August 8, 2022, at which time the complainant and the respondents appeared, 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), as amended by §1 of Public Act 22-3.

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 May 7, 2021, the complainant requested from the respondents a copy of "the complete files of the Connecticut Department of Agriculture pertaining to Michael A. Hearl and the goats he cared for now or formerly on property located in Cornwall, Connecticut, including communications, reports, photographs, warrants, court filings and all other documents."
3. It is found that, by email dated May 7, 2021, the respondents acknowledged receipt of the complainant's request.
4. It is found that, by email dated May 23, 2021, the complainant inquired about the status of her records request, to which respondents replied that they were continuing to work on it.
5. By letter of complaint filed June 22, 2021,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for public records.

¹On 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

6. It is found that, on June 25, 2021 and October 26, 2021, the respondents provided to the complainant copies of hundreds of records responsive to her request.

7. At the time of the request, §1-200(5), G.S., provided that:

“[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

8. 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.

9. 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.”

10. 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.

11. At the hearing in this matter, the complainant argued that the respondents failed to conduct a thorough search for court filings regarding Michael Hearl (“court filings”), and that therefore, they failed to provide copies of all responsive records to her. The complainant also argued that the records that were provided to her were not provided promptly.

12. Regarding the complainant’s assertion that the respondents failed to provide copies of all court filings to her, it is found that the respondents were not parties to any civil or criminal litigation involving Michael Hearl, and therefore, to the extent they maintained any court filings, such court filings were courtesy copies received from the Office of the Attorney General and the

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.

²Section 147 of Public Act 21-2 (June Special Session) subsequently amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped.” That amendment was effective on June 23, 2021.

State's Attorney's Office, which did not constitute a complete copy of all court filings maintained by those offices. With respect to the search for the courtesy copies of the court filings, it is found that the respondents conducted a search of all former employees' emails using the search terms "Hearl" and Butterfield." It is further found that the respondents requested that their current employees search their emails and electronic files for responsive records using the same search terms. It is also found that the respondents conducted a search of their physical files, including the entire file pertaining to Michael Hearl, for any responsive hardcopy records. It is found that the respondents located responsive records and provided all such records to the complainant on June 25, 2021 and October 26, 2021 (see paragraph 6, above).

13. Based upon the foregoing, it is found that the respondents conducted a thorough search for the court filings and provided to the complainant copies of all such records they maintain.

14. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with regard to the complainant's request for court filings.

15. With respect to the complainant's claim that the respondents failed to provide the records to her promptly, the Commission has previously opined that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly" as used in §1-210(a), G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request." The advisory opinion goes on to describe some of the factors that should be considered, including: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

16. It is found that the complainant made 10 separate records requests to the respondents during April and May 2021. It is further found that the respondents employ only one staff attorney to handle the respondents' legal matters, including all records requests. As to the records request at issue, it is found that the complainant did not indicate a specific time within which she needed such records. The respondents testified, and it is found, that their search for electronic records located nearly 1,000 potentially responsive emails. The respondents' staff attorney reviewed those emails and determined that approximately 400 were responsive. The respondents then manually converted each individual email into a PDF because the complainant indicated that she could not view them in their original format. The respondents testified, and it is found, that they also located hundreds of hardcopy records, which they scanned and provided to the complainant. It is found that, in total, the respondents provided the complainant with approximately 1,500 records responsive to her request.

17. Based on the foregoing, it is concluded that the respondents did not violate the promptness provisions in §§1-210(a) and 1-212(a), G.S.

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 September 28, 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:

NANCY BURTON, 147 Cross Highway, Redding, CT 06896

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF AGRICULTURE;
AND STATE OF CONNECTICUT, DEPARTMENT OF AGRICULTURE**, c/o Attorney
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Cynthia A. Cannata
Acting Clerk of the Commission