

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Collins and The Day,

Complainants

against

Docket #FIC 2022-0375

Chairman, State of Connecticut,  
Connecticut Port Authority;  
Executive Director, State of  
Connecticut, Connecticut Port  
Authority; and State of  
Connecticut, Connecticut Port  
Authority,

Respondents

April 26, 2023

The above-captioned matter was heard as a contested case on January 3, 2023, at which time the complainants and the respondents appeared and presented testimony, exhibits, and argument on the complaint.

Following the hearing, the parties filed several email communications with the Commission. Such email communications were admitted into evidence as follows:

Complainants' Exhibit B (after-filed): Email communication from the complainants, received and filed January 5, 2023 (one page);

Complainants' Exhibit C (after-filed): Email Communication from the complainant, received and filed January 12, 2023 (one page); and

Respondents' Exhibit 4 (after-filed): Email communication from the respondents (with attachments), received and filed January 5, 2023 (six pages).

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 July 18, 2022, the complainants requested from the respondents copies of "all correspondence regarding subpoenas issued to the port authority

since 2018 ... [including] the subpoenas, the accompanying correspondence with them and any and all responses by anyone affiliated with the port authority.”

3. It is found that, by email dated August 13, 2022, the respondents acknowledged the request described in paragraph 2, above, and notified the complainants that they would provide copies of certain records. However, it is found that the respondents further notified the complainants that “[t]o the extent that any additional subpoenas were issued to the [respondents], such subpoenas, any responses thereto and/or document productions related thereto, are exempt from disclosure pursuant to Section 1-210(b)(13) of the General Statutes of Connecticut.”

4. It is found that, by email received and filed August 26, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by refusing to provide copies of the withheld records described in paragraph 3, above.

5. 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.

6. 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.

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) and 1-210(a), G.S.

9. It is found that, on the day of the hearing in this matter, the respondents provided the complainants with copies of the withheld records described in paragraph 3, above.

10. At the hearing in this matter, the complainants claimed that, although the respondents belatedly provided copies of the requested records, the respondents failed to provide such records promptly.<sup>1</sup> The complainants requested that the Commission impose a civil penalty against the respondents.

11. The Commission has previously opined that the word “promptly,” as used in §§1-210(a) and 1-212(a), 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 requestor 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 the loss of the personnel time involved in complying with the request” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission further explained:

In weighing these and other factors, common sense and good will ought to be the guiding principles. The Commission believes that if an agency politely explains to a person seeking access to records why immediate compliance is not possible, that person will most likely understand and appreciate the agency’s obligation to balance its duties as custodian of public records with its other duties. And as long as it appears to that person that the agency is not trying to unduly delay compliance, or impose unnecessary restrictions, he or she will most likely try to accommodate the agency. Indeed, it has been the Commission's experience that when an agency is sensitive to the needs of the requester, in most cases the agency is able to meet such person's essential requirements in a manner that also permits it to satisfactorily perform its other functions. In the final analysis, it is the Commission's opinion that this rule of reason and courtesy, if implemented, should eliminate the vast majority of potential conflicts between a citizen’s right to timely access to public records, and an agency's duty to comply while processing other important business.

12. At the contested case hearing, the respondents’ sole claim was that they did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., because copies of the withheld records were provided by the respondents to the Office of the Attorney General (“OAG”) in connection with an ongoing whistleblower investigation, and the respondents reasonably believed that the OAG might move to intervene and assert that the withheld records

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<sup>1</sup> The hearing officer notes that, during the hearing, the complainants also contended that they had no way of knowing whether the records disclosed that day were responsive to the request. However, by email dated January 12, 2023, the complainants notified the hearing officer that they had reviewed the records described in paragraph 9, above, and that they were no longer claiming that the respondents failed to provide copies of all records responsive to the request. Accordingly, that issue will not be further addressed. The complainants’ January 12, 2023 email has been marked as Complainants’ Exhibit B (after-filed).

are exempt from disclosure pursuant to §1-210(b)(13), G.S.<sup>2</sup> The respondents further argued that, as soon as they confirmed that the OAG would not intervene, they promptly turned over all of the withheld records.

13. It is found that the respondents' argument, described in paragraph 12, above, is unavailing. Nothing in the FOI Act permits a public agency to withhold public records based solely on the belief that another public agency might intervene and assert an objection to the disclosure of such records.

14. Moreover, even if the respondents believed that a separate public agency could intervene in this matter and assert an objection to disclosure of the records responsive to the request identified in paragraph 2, above, it is found that the respondents unduly delayed compliance with the request by not acting with reasonable diligence to ascertain the position of the OAG. It is found that the respondents failed to prove that they made diligent efforts to obtain a firm answer from the OAG regarding its possible objection to disclosure of the withheld records until December 2022, after the respondents received the notice of hearing in this matter.

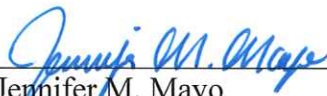
15. Based on the foregoing, it is found that the respondents failed to prove that they acted promptly in complying with the request set forth in paragraph 2, above. Accordingly, it is concluded that the respondents violated the promptness provisions in §§1-210(a) and 1-212(a) by failing to provide the complainant copies of the records described in paragraph 3, above, promptly upon request.

16. Notwithstanding the conclusion in paragraph 15, above, the Commission in its discretion declines to consider the imposition of a civil penalty under the facts of this case.

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 and disclosure requirements of §§1-210 and 1-212, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 26, 2023.

  
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Jennifer M. Mayo  
Acting Clerk of the Commission

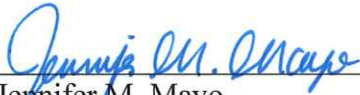
<sup>2</sup> Section 1-210(b)(13), G.S., provides, in relevant part, that “[n]othing in the [FOI] Act shall be construed to require disclosure of ... [r]ecords of an investigation or the name of an employee providing information under the provisions of [§4-61dd, G.S.]” Often referred to as the “whistleblower statute,” section 4-61dd, G.S., among other things, authorizes the OAG to conduct investigations into reports of illegal activity, corruption, abuse of authority, and corruption in a state or quasi-public agency.

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:

**DAVID COLLINS AND THE DAY**, 47 Eugene O'Neill Drive, New London, CT 06320

**CHAIRMAN, STATE OF CONNECTICUT, CONNECTICUT PORT AUTHORITY;  
EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, CONNECTICUT PORT  
AUTHORITY; AND STATE OF CONNECTICUT, CONNECTICUT PORT  
AUTHORITY**, c/o Attorney Christopher J. Hug, Robinson & Cole LLP, 280 Trumbull Street,  
Hartford, CT 06103



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Jennifer M. Mayo  
Acting Clerk of the Commission