

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Bobby Simmons,

Complainant

against

Docket # FIC 2020-0659

Office of the City Attorney, City of
Bridgeport; and City of Bridgeport,

Respondents

February 22, 2023

The above-captioned matter was heard as a contested case on December 14, 2021 and February 24, 2022, 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 hearing was conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

Pursuant to the order of the hearing officer, on January 7, 2022, the respondents submitted, without objection from the complainant, two after-filed exhibits. Such after-filed exhibits were marked as: Respondents' Exhibit 5 (after-filed): Affidavit of Margo Litz, and Respondents' Exhibit 6 (after-filed): Affidavit of Dina A. Scalo.

On March 8, 2022, the complainant filed a post-hearing brief. The respondents did not file a brief.

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 October 20, 2020, the complainant requested that the respondents provide copies of the following records:
 - (a) All contracts and agreements for the performance of legal services between Mark T. Anastasi and the City of Bridgeport for the years 2017, 2018, 2019 and 2020;
 - (b) All contracts and agreements between Russell D. Liskov and the City of Bridgeport for the years 2017, 2018, 2019 and 2020;
 - (c) Total employee compensation (reported on IRS Form W-2) paid by the City of Bridgeport to Russell D. Liskov for the years 2016

and 2017;

- (d) All contracts and agreements between Ronald J. Pacacha and the City of Bridgeport for the years 2017, 2018, 2019 and 2020;
- (e) Total employee compensation (reported on IRS Form W-2) paid by the City of Bridgeport to Ronald J. Pacacha for the years 2016 and 2017.

3. It is found that, by letter dated October 26, 2020, the respondents acknowledged the complainant's request.

4. It is found that, following the request described in paragraph 2, above, the complainant placed at least two phone calls to the Office of the City Attorney to inquire about the status of his request. It is further found that, by letter dated December 8, 2020, the complainant submitted a follow-up letter to the respondents about the status of his pending request.

5. It is found that, by letter dated December 10, 2020, the respondents notified the complainant that they were in the process of reviewing the pending request and retrieving responsive records, and that additional time was needed for legal review, prior to any disclosure of responsive records.

6. By letter of complaint filed December 28, 2020¹, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for the public records described in paragraph 2, above. By letter filed with the Commission on December 9, 2021, the complainant requested that the Commission issue a civil penalty against the respondents because no responsive records had been provided to him in over one year.

7. 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.²

¹ 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 was 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.

² Public Act 21-2 (June Sp. Sess.) amended the definition of "public records or files" to also include data or information that is "videotaped."

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. It is found that on December 13, 2021, 13 months after the date of the request, and one day prior to the first day of hearing in this matter, the respondents provided to the complainant 36 pages of responsive records.

12. At the December 14, 2021 hearing, the complainant contended that the respondents did not promptly provide him with all responsive records. The complainant also contended that, because the respondents failed to provide any records until one day prior to the hearing, he had no opportunity to review the records to determine whether all responsive records were provided. The respondents disputed the complainant’s contention that all responsive records were not promptly provided. In light of the foregoing, the hearing was continued to allow the complainant time to review the records provided by the respondents.

13. At the February 24, 2022 hearing, the complainant contended that the only remaining issues were the allegations that the respondents failed to provide him with a copy of the records responsive to the request set forth in paragraph 2(a), limited to the period of July 1, 2020 through December 31, 2020, and that the respondents did not promptly provide the responsive records.

14. With respect to the allegation that the respondents did not provide copies of the records identified in paragraph 2(a), above, for the period of July 1, 2020 through December 31, 2020, it is found that the respondents failed to present evidence regarding the nature and scope of the search conducted. Absent such evidence, it is found that the respondents failed to prove that they conducted a reasonable and diligent search and therefore failed to prove that they provided all responsive records to the complainant.

15. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

16. With respect to the complainant’s contention that the respondents failed to provide the records described in paragraph 11, above, to him 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.

17. In this case, the respondents contended that they have only one attorney who deals with virtually all FOI requests and complaints involving the City of Bridgeport, in addition to other duties, and that the COVID-19 pandemic played a role in delaying their response.

18. It is found that, although the complainant did not indicate a specific time within which he needed the requested records, it is found that he made several attempts to obtain copies of the requested records following his initial request.

19. It is found that the record is devoid of evidence that any action was taken to conduct a search for the requested records in the two months that immediately followed the respondents’ receipt of the request. It is found that an assistant in the Office of the City Attorney first conducted a search for records responsive to the complainant’s request on or about December 28, 2020, and a subsequent search was conducted on or about January 21, 2021.

20. It is found that, following each search identified in paragraph 19, above, the responsive records located and provided to Associate City Attorney Dina Scalo for legal review. It is found that Attorney Scalo conducted a “periodic” review of such records between December 2020 and December 2021. It is further found that, despite the COVID-19 pandemic and office closures, Attorney Scalo, at all times, had access to the 36 pages of responsive records, which were maintained electronically.

21. It is further found that the volume of records reviewed (36 pages) was low.

22. Taking into consideration all of the factors presented, it is found that the respondents failed to provide the records described in paragraph 11, above, to the complainant promptly.

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

24. With regard to the complainant’s request that the Commission impose a civil penalty against the respondents in this case, the Commission notes that on August 10, 2022, it imposed a civil penalty against the Chief of Police for the Bridgeport Police Department and City of Bridgeport in the amount of \$750.00 when it determined that the denial in that case was without “reasonable grounds.” Russell Peeler v. Rebeca Garcia, Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport, Docket #FIC 2021-0475 (Aug. 10, 2022). In Peeler, the denial was due, in part, to delays within the Office of the

City Attorney. Although the Commission indicated that it was sympathetic to the workload of counsel, it noted that the public agency's obligations under the FOI Act are a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty." Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, HHB-CV-18-6047741-S, 2020 WL 5540637, *6 (Conn. Super. Ct. July 2, 2020) (Cordani, J.).

25. Having previously imposed a civil penalty against the City of Bridgeport for delays caused, in part, by the Office of the City Attorney, as is the case here, the Commission, in its discretion, declines to consider the imposition of an additional civil penalty at this time. However, in light of the pattern of delay in responding to FOI requests within the Office of the City Attorney, it is found that training regarding the promptness requirements in the FOI Act is warranted.

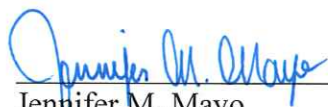
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within fourteen days of the Notice of Final Decision in this matter, the respondents shall conduct a search for records responsive to the complainant's request for contracts and agreements for the performance of legal services between Mark T. Anastasi and the City of Bridgeport for the period of July 1, 2020 through December 31, 2020. If such records are located, the respondents shall forthwith provide a copy of such records to the complainant, free of charge. If no such records are located, the respondents shall forthwith provide to the complainant an affidavit from the individual who conducted the search, describing the nature and scope of such search, and indicating that no such records exist.

2. Forthwith, the respondents, or their designee, shall contact the FOI Commission to schedule an FOI Act training session, to be conducted by FOI Commission staff. The respondents, or their designee, shall forthwith contact the FOI Commission to schedule such training session.

3. 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 February 22, 2023.



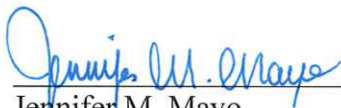
Jennifer M. Mayo
Acting Clerk of the Commission

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:

BOBBY SIMMONS, 45 Pinepoint Drive, Bridgeport, CT 06606

OFFICE OF THE CITY ATTORNEY, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604 and Attorney Michael Jankovsky, City of Bridgeport, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission