

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher Tobia,

Complainant

against

Docket #FIC 2022-0126

Director of Human Resources,
City of New Haven; Director of
Parks and Public Works, City of
New Haven; and City of New Haven,

Respondents

February 22, 2023

The above-captioned matter was heard as a contested case on November 4, 2022, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Subsequently, pursuant to an Order of the hearing officer, the matter was reopened and a hearing was held on December 12, 2022, at which time additional testimony, exhibits and argument were presented.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.

2. It is found that on October 19, 2021, via a City of New Haven website portal, the complainant made a request to the respondents for copies of:

[a] the Bachelor of Science degree for Mr. Sean O'Grady, which specifically qualified him to take the test...in connection with his new job as Assistant Parks Superintendent M-5377[;]

[b] [A]ll documentation, notes, work experience, prior work duties that clearly depict the 5-7 years' experience in park maintenance work; or any equivalent combination of training and experience which provides the necessary knowledge, abilities, and skills as stated in the job description...[; and]

[c] All notes, comments, evidence of dialog, discussions and how the decision was made to pay a City Mechanic and Welder of 16 years the MAXIMUM salary, as depicted on the 10/8/2021 Letters for Personnel Action which delineates his Range Step 10 salary of \$78,213.00. (Emphasis in original) (“October 19th request”).

3. It is found that by email dated October 22, 2021, El Sulmann, a paralegal in the City of New Haven’s Office of the Corporation Counsel, acknowledged, on behalf of all respondents, the October 19th request.

4. It is found that by email dated March 10, 2022, the complainant followed-up with El Sulmann regarding the status of the October 19th request.

5. By email received March 17, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide him with copies of the requested records.

6. Section 1-200(5), G.S., provides 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, videotaped, printed, photostated, photographed or recorded by any other method.

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 any public record.”

9. It is found that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that by emails dated June 14, 2022, and June 15, 2022, the respondents provided the complainant with copies of records responsive to the October 19th request.

11. At the hearings in this matter, the complainant contended that the respondents failed to provide him with copies of all responsive records.

12. At the November 4th hearing, the respondent Director of Human Resources testified, and it is found, that the respondents conducted a thorough search for responsive records and provided to the complainant a copy of all non-exempt records maintained by the Human Resources Department. However, it is found that the respondents withheld certain examination questions and data, which they claimed to be exempt from disclosure pursuant to §1-210(b)(6), G.S.

13. With respect to the records claimed to be exempt from disclosure, on November 17, 2022, pursuant to an Order of the hearing officer, the respondents submitted such records for in camera inspection, along with an in camera index. The in camera records shall be identified herein as IC-2022-0126-1 through IC-2022-0126-8.

14. Section 1-210(b)(6), G.S., provides that disclosure is not required of “[t]est questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations....”

15. Based on careful inspection of the in camera records, and the testimony in the record, it is found that IC-2022-0126-1 through IC-2022-0126-8 constitute test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment or academic examinations, within the meaning of §1-210(b)(6), G.S., and that therefore they are permissibly exempt from disclosure.

16. At the November 4th hearing, the respondents also presented evidence that the respondent Director of Parks and Public Works searched for and did not locate any responsive records maintained by the Parks and Public Works Department. The respondents, however, did not present evidence detailing the nature and scope of such search.

17. Subsequently, pursuant to an Order of the hearing officer, the respondents submitted an affidavit from Jeff Pescosolido, the respondent Director of Parks and Public Works, regarding his search for responsive records¹. The complainant objected, in part, to such affidavit. In addition, Mr. Pescosolido’s affidavit did not detail the nature and scope of such search. Thereafter, at the request of the hearing officer, the hearing was reopened and the respondents were ordered to produce Mr. Pescosolido as a witness to provide additional testimony regarding the October 19th request. Mr. Pescosolido did not appear at the reopened hearing.

18. With respect to whether the respondent Director of Parks and Public Works searched for and located any responsive records, it is found that the respondents failed to prove that a thorough search for such records was conducted and thereby failed to prove that the Director of Parks and Public Works provided to the complainant all responsive records maintained by the Parks and Public Works Department.

¹ Such affidavit has been marked as Respondents’ Exhibit 2 (after-filed).

19. It is therefore concluded that the respondent Director of Parks and Public Works violated §§1-210(a) and 1-212(a), G.S.

20. With respect to whether the respondents promptly provided the complainant with copies of the responsive records, 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 consideration all of the factors presented by a particular request. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: 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.

21. At the November 4th hearing, the respondent Director of Human Resources testified, and it is found that, within days of receiving the October 19th request, she located non-exempt responsive records, and forwarded such records to Corporation Counsel, believing that Corporation Counsel would forward the records to the complainant. It is found that once the respondents became aware of the misunderstanding, they provided the responsive records as set forth in paragraph 10, above.

22. It is found that the misunderstanding on the part of the respondent Director of Human Resources resulted in the respondents’ failure to provide the records “quickly and without undue delay.” It is therefore found that the respondents failed to promptly provide the requested records.

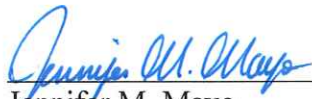
23. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., except with respect to IC-2022-0126-1 through IC-2022-0126-8.

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

1. Within 14 days of the Notice of Final Decision, the respondent Director of Parks and Public Works shall conduct another search for records responsive to the October 19, 2021 request, described in paragraph 2 of the findings, above, and provide copies of such records to the complainant, free of charge. If the respondent Director of Parks and Public Works does not locate the requested records, the respondents shall, within 14 days of the Notice of Final Decision, provide the complainant with an affidavit detailing the scope and results of the search including the names of the individual(s) who conducted the search.

2. 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.



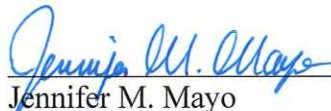
Jennifer M. Mayo
Acting Clerk of the Commission

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:

CHRISTOPHER TOBIA, 1224 Dean Street, New Haven, CT 06512

DIRECTOR OF HUMAN RESOURCES, CITY OF NEW HAVEN; DIRECTOR OF PARKS AND PUBLIC WORKS, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Jennifer M. Mayo
Acting Clerk of the Commission