

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

William Fish, Jr.,

Complainant

against

Docket # FIC 2022-0554

Chief Executive Officer, Connecticut
Innovations; and Connecticut Innovations,

Respondents

May 24, 2023

The above-captioned matter was heard as a contested case on March 10, 2023, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 November 14, 2022, the complainant requested that the respondents provide him copies of the following records:
 - a. All documents related to Matthew Bloom's employment and the purported "elimination" of his position at Connecticut Innovations ("CI");
 - b. All documents related to the alleged "strategical directional pivot CI has made toward investing in climate solutions and future funds and other related projects" that was the purported basis for the elimination of Matthew Bloom's position at CI;
 - c. All documents that are related to actions by CI to hire or retain other individuals as employees or consultants during the period August 1, 2021 through the date of the request;
 - d. All documents that are related to the purported job elimination of any other CI employee during the past two years;

- e. All documents that reference or constitute communications (electronic or otherwise) between or among Matthew Bloom and any other person(s) at or working for CI during the period of Matthew Bloom's paternity leave (November 29, 2021 through January 28, 2022) and during the period of Matthew Bloom's FMLA leave (June 22, 2022 through July 11, 2022);
- f. All documents referencing any bonus determination regarding Matthew Bloom during the period of his employment at CI;
- g. All emails and texts sent or received by Matthew McCooe that reference Matthew Bloom or his actions during the past twenty-one months from the date of the request;
- h. All emails and texts sent or received by Phil Siuta that reference Matthew Bloom or his actions during the past twenty-one months from the date of this request;
- i. All emails and texts sent or received by Chris Baisden that reference Matthew Bloom or his actions during the past twenty-one months from the date of this request;
- j. All documents prepared by Matthew McCooe, Phil Siuta, and/or Chris Baisden that reference Matthew Bloom or his actions during the past twenty-one months from the date of the request (including all notebook or similar entries);
- k. All written communications (other than emails and texts referenced in requests 2g through 2i above) sent or received by Matthew McCooe, Phil Siuta, and/or Chris Baisden that reference Matthew Bloom or his actions during the past twenty-one months from the date of the request.

3. It is found that, by letter received and filed November 30, 2022, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the request described in paragraph 2, above.

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 . . . (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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. At the hearing in this matter, the respondents claimed they were committed to complying with the request described in paragraph 2, above. However, the respondents contended that CI is a small agency with no legal department, and that the request was so broad that they needed a substantial amount of additional time to fully comply.

9. It is found that the complainant first requested the records described in paragraph 2, above, in letters dated August 2, 2022 and August 10, 2022.

10. It is found that, on August 18, 2022, August 23, 2022, September 8, 2022, and September 9, 2022, the respondents provided the complainant with copies of certain records that the respondents were able to easily locate and identify as responsive to the request. It is further found that the respondents informed the complainant that they would provide additional records as they became available. However, it is found that, between September 9, 2022 and the date of the hearing in this matter, the respondents had not provided copies of any additional records to the complainant.

11. At the hearing in this matter, the respondents testified that the only responsive records that had not yet been provided to the complainant were emails, text messages, and online chat conversations. However, with respect to the requests described in paragraphs 2.j and 2.k, above, the respondents testified that they did not know whether Matthew McCooe maintains any notebooks or written communications other than emails or text messages responsive to such requests, and that they did not ask Mr. McCooe to search for such records.¹ Accordingly, it is

¹ The Commission notes that the complainant issued a subpoena to Mr. McCooe pursuant to §51-85, G.S., compelling him to appear and testify at the contested case hearing. Prior to the hearing, the respondents filed a motion to quash the subpoena, but the hearing officer declined to rule on the motion as the respondents did not

found that the respondents failed to prove that they conducted a thorough search for records responsive to the requests described in paragraphs 2.j and 2.k, above.

12. It is found that, by September 2022, the respondents had located approximately 22,000 emails, text messages, and online chat conversations that are responsive to the request described in paragraph 2, above.

13. It is found that the respondents did not retain counsel to assist with their review of the records described in paragraph 12, above. It is found that, beginning in November 2022, the respondents assigned two employees to review such records using an electronic database to determine whether each such record contained information that is exempt from disclosure under the FOI Act.

14. It is further found that one of the two employees assigned to conduct the review described in paragraph 13, above, does not have the requisite knowledge to determine whether information contained in the records is exempt from disclosure. It is found that, if such employee believes that a record contains information that may be exempt from disclosure, he enters a notation in the database that such record needs further review. It is found that the respondents plan to disseminate any records that such employee marks as needing further review to another employee with the requisite knowledge to determine what information, if any, to redact from such records.

15. It is found that, as of the date of the hearing in this matter, the respondents had not completed any redactions. It is found that the respondents do not plan to begin the redaction process until they have completed the initial review of all 22,000 responsive records described in paragraph 12, above.²

16. It is found that, as of the date of the hearing in this matter, the respondents had reviewed approximately 500 of the 22,000 responsive records described in paragraph 12, above. It is found that, of the 500 records reviewed, the respondents were able to easily determine that approximately 1/3 of such records could be disclosed to the complainant without redactions. However, it is found that the respondents have not provided copies of any such records to the complainant. The respondents testified at the hearing that they plan to provide copies of all responsive records to the complainant in a single production after the entire review and redaction process is complete.

17. It is found that, as of the date of the hearing in this matter, the respondents had two other FOI requests pending, both of which they received after the request at issue in this case. It is found that one such request will require the respondents to review approximately 3,000 responsive records. The respondents testified that they do not intend to complete the request at issue in this case first, but instead that they plan to work on both requests simultaneously.

identify any statute or regulation that authorizes a hearing officer to quash a statutorily authorized subpoena. Despite being under subpoena, Mr. McCooe failed to appear for the contested case hearing.

² The Commission notes that, when asked to identify the exemptions they intended to claim, the respondents identified only those set forth in §§32-244 and 1-210(b)(5), G.S. The Commission further notes that the complainant stated that he was not challenging any claims of exemption in this proceeding, but he reserved the right to challenge any such claims in a future complaint.

18. At the hearing in this matter, the respondents testified that spending even 2 hours per week working on the request at issue in this case would be “unattainable.” The respondents estimated that, working at their current pace, it would take them approximately five years to comply with the request.

19. Based on the foregoing, and under the facts and circumstances of this case, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with copies of the records requested in paragraph 2, above.

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

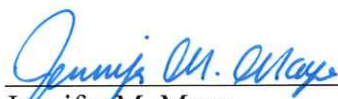
1. Within 14 days of the date of notice of final decision in this matter, the respondents shall conduct a thorough and diligent search for all notebooks and written communications, other than emails, text messages, and online chat conversations, responsive to the requests described in paragraph 2.j and 2.k, above, and provide copies of such records to the complainant, free of charge. In the event such search yields no records responsive to the requests described in paragraphs 2.j and 2.k, above, respondent Matthew McCooe shall provide the complainant with an affidavit detailing the nature and scope of the search, and averring that no such records exist.

2. Within 30 days of the date of notice of final decision in this matter, the respondents shall commence a rolling production to the complainant of copies of records responsive to the request described in paragraph 2, above. The respondents shall continue to provide copies of such records to the complainant, free of charge, at least every 30 days thereafter, until copies of all such records have been provided to the complainant. The respondents shall complete such production no later than 6 months from the date of notice of final decision in this matter.

3. In complying with paragraphs 1 and 2 of the order, above, the respondents may withhold any responsive records, or portions thereof, that are mandatorily exempt from disclosure, and any responsive records that are exempt from disclosure pursuant to §§1-210(b)(5), 32-244, and 32-244a, G.S. The respondents shall not withhold any responsive records based on any other permissive exemption.

4. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210 and 1-212, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 24, 2023.



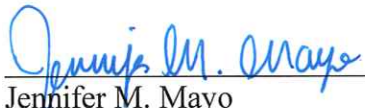
Jennifer M. Mayo
Acting Clerk of the Commission

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:

WILLIAM FISH, JR., Hinckley, Allen & Snyder LLP, 20 Church Street, Hartford, CT 06103-1221

**CHIEF EXECUTIVE OFFICER, CONNECTICUT INNOVATIONS; AND
CONNECTICUT INNOVATIONS**, c/o Attorney Sarah Gleason, Shipman & Goodwin, 300 Atlantic Street, 3rd Floor, Stamford, CT 06901



Jennifer M. Mayo
Acting Clerk of the Commission