

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Pasquale Salemi,

Complainant

against

Docket # FIC 2023-0540

Chief Executive Officer, Metropolitan  
District Commission; and Metropolitan  
District Commission,

Respondents

August 14, 2024

The above-captioned matter was heard as a contested case on April 5, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, 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. By email filed October 26, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with his request for copies of certain records, which are described in paragraph 8, below.
3. 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.
4. 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.

5. 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.”

6. It is concluded that the records requested by the complainant are public records within the meaning of §§1-210(a) and 1-212(a), G.S.

7. It is found that on or around October 17, 2022, the respondents retained Attorney Patrick McHale to conduct an investigation regarding certain legal work that the law firm Sandler & Mara, P.C., performed for the respondents in 2021 and 2022 (“Investigation”).

8. It is found that by letter dated September 1, 2023, the complainant, through counsel, requested that the respondents provide him with copies of the following records:

- a. Any and all statements provided to Attorney Patrick McHale in connection with the Metropolitan District Commission’s (“MDC”) Investigative Report Relating to Sandler & Mara, P.C. Invoices, dated April 4, 202[3] (“Investigative Report”);
- b. Any and all material Jacqueline Mandyk, Chair of the Internal Audit Committee [(“Committee”)] provided Attorney Patrick McHale;
- c. Any and all written witness questions that Attorney Patrick McHale had in connection with the Investigative Report;
- d. Documents evidencing the comings and goings of MDC employees from date to date;
- e. Notes kept by Attorney Patrick McHale in connection with the Investigative Report;
- f. Copy of all legal opinions on recusal and the authority of the chairman referenced in the January 19, 2023 meeting of the [Committee];
- g. Copy of all documents provided to the [Committee] in its March 16, 2023 meeting;
- h. Copy of all documents provided to the [Committee] in its March 29, 2023 meeting;
- i. Copy of all documents provided to the [Committee] in its April 4, 2023 meeting;
- j. Copy of any timelines referenced in the Investigative Report;

- k. Copies of any board resolutions in 2021 or 2022 concerning MIRA, the South Meadows trash facilities, or work performed by Attorney Sandler;
- l. Copies of any and all documents in which outside counsel fees are recorded as allocated and spent for the past years 2021 and 2022;
- m. Copy of the full transcript of the February 1, 2023 meeting of the Board of Finance.

9. It is found that by letter dated September 11, 2023, the respondents acknowledged the complainant's request.

10. It is found that by letter dated October 2, 2023, the respondents notified the complainant, through counsel, that they had located 124 pages of records responsive to his request. It is further found that the respondents notified the complainant that although they did not maintain any records responsive to certain categories identified in the request, they asked Attorney McHale to provide them with any responsive records that he maintained in his file.

11. It is found that by email dated October 4, 2023, the respondents provided the complainant, through counsel, with the 124 pages of records described in paragraph 10, above.

12. It is found that on October 11, 2023, the respondents requested that Attorney McHale provide them with his entire file related to the Investigation. It is further found that on October 19, 2023, Attorney McHale provided the respondents with a copy of such file. It is found that sometime thereafter, the respondents reviewed Attorney McHale's file and located 80 additional pages of records responsive to the complainant's request.

13. It is found that on or around October 31, 2023, the respondents provided the complainant with the 80 pages of records from Attorney McHale's file, described in paragraph 12, above. It is further found that in a letter accompanying such records, the respondents notified the complainant that the Committee had voted to waive the attorney-client and attorney work product privileges with respect to such records. It is also found that the respondents notified the complainant that they did not maintain any additional records responsive to the request.

14. It is found that by email dated November 1, 2023, the complainant, through counsel, clarified the date range applicable to the request described in paragraph 7.d, above.<sup>1</sup>

15. It is found that on or around November 14, 2023, the respondents notified the complainant that they did not maintain any records responsive to the request described in paragraph 7.d, as clarified by the November 1, 2023 letter described in paragraph 14, above.

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<sup>1</sup> The November 1, 2023 email also included a new request for copies of records that were not part of the request that is the subject of the complaint. The November 1, 2023 request is not at issue in this matter and will not be further addressed in this decision.

### Sufficiency of the Complaint

16. In a motion to dismiss dated April 3, 2023, and again in their post-hearing brief, the respondents claimed that the complaint should be dismissed because it did not sufficiently allege a violation of the FOI Act. Specifically, the respondents contended that because the complainant conceded in the complaint that the respondents did not issue a written denial of the request and did not allege the specific date on which the request was denied, the complaint failed to allege a violation of the FOI Act.

17. Section 1-206(b)(1), G.S., provides in relevant part that “[a]ny person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said [C]ommission. A notice of appeal shall be filed not later than thirty days after such denial ....” Thus, “the right of appeal to the [Commission] in §[1-206(b)(1)] is the right to appeal a denial” of a request. *Town of West Hartford v. FOI Commission*, 218 Conn. 256, 262 (1991).

18. With respect to what constitutes a “denial” for purposes of allowing a requester to initiate an appeal to the Commission, §1-206(a), G.S., provides in relevant part that “[a]ny denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request .... ***Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.***” (Emphasis added.)

19. In *City of Bridgeport v. FOI Commission*, 222 Conn. App. 17, 63 (2023), cert. denied, 348 Conn. 946 (2024), the Appellate Court concluded that a public agency’s mere acknowledgment of a request accompanied by an assurance of future compliance does not abrogate a requester’s right to appeal under §1-206(a), G.S., if the agency fails to fully comply with a request within four business days. As the Court explained, “for purposes of filing a complaint with the [C]ommission, the [FOI Act] requires compliance with a request for public records—not simply ‘assurances’ that the agency will comply at some point in the future.” *Id.*<sup>2</sup>

20. It is found that while the complaint, which was submitted using the Commission’s complaint form, did not include the date of the alleged denial, the complainant attached copies of the request and the respondents’ October 2, 2023 response to establish that the respondents did not fully comply with the request within four business days. See *Dlugokecki v. Vieira*, 98 Conn. App. 252, 258 (2006) (“A complaint includes all exhibits attached thereto.”); *City of Waterbury v. Fusco Corp.*, 2013 WL 3871418, at \*3 (Conn. Super. July 3, 2013) (“Attachments are considered part of the complaint and are to be considered in ruling on motions to strike.”). Specifically, it is found that the attachments to the complaint established that the complainant

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<sup>2</sup> As the Court further explained, this does not mean that an agency that fails to fully comply with a request within four business days necessarily will be found to have violated the FOI Act. Rather, “the question of when an appeal can be filed is distinct from the question of whether the agency violated the [A]ct.” *City of Bridgeport*, 222 Conn. App. at 50 n.10. Section 1-206(a), G.S., “does not mandate that a public agency’s failure to disclose requested records within four business days after receiving a records request constitutes a violation of the [A]ct,” but “merely ensures an expedient right of appeal for those who do not desire to await a written denial.” (Citation & quotation marks omitted) *Id.* at 49-50 & n.10.

made the request at issue on September 1, 2023, and that as of October 2, 2023 the respondents had not yet completed the search of Attorney McHale's file.<sup>3</sup>

21. Based on the foregoing, it is found that the complaint, including the attachments thereto, sufficiently alleged that the respondents failed to fully comply with the request within four business days, and therefore that the complaint alleged that the request had been "denied," within the meaning of §1-206(b)(1), G.S. It is therefore concluded that the complaint alleged sufficient facts to allow the Commission to consider the merits of the appeal.

### **Whether the Respondents Fully Complied With the Request**

22. With respect to the merits of the complaint, the complainant claims that although the respondents provided him with the records described in paragraphs 11 and 13, above, the respondents either do or should maintain additional records responsive to his request.

23. It is found that the respondents testified credibly that they provided the complainant with copies of all responsive records that they maintained or that were contained in Attorney McHale's file. Specifically, it is found that many of the complainant's requests overlapped with previous requests submitted by the complainant and other MDC Commissioners, and that the respondents had already gathered many of the responsive records in the course of responding to such previous requests. It is further found that the respondents' District Clerk conducted additional searches to ensure that the respondents located all responsive records. It is found that the District Clerk discussed the complainant's request with the respondents' District Counsel, CEO, and Finance Department, and reviewed the minutes of all relevant meetings for references to any additional responsive records. It is found that the respondents provided the complainant with copies of all responsive records that were located as a result of such efforts.

24. It is also found that the District Clerk thoroughly reviewed Attorney McHale's file for any records responsive to the complainant's request, and that the respondents provided the complainant with copies of all such records.

25. It is further found that the respondents did not withhold any responsive records based on any statutory exemption.

26. Based on the foregoing, it is found that the respondents conducted a thorough search for all records responsive to the complainant's request. It is further found that the respondents provided the complainant with copies of all responsive records that they maintained as of the date of the complainant's request. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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<sup>3</sup> The respondents also contended that the complaint included a "misrepresentation" because in response to question 12 of the complaint form, which asks whether the complainant "received any other written communication from the agency after [he] submitted [his] request," the complainant selected "No" from the form's drop-down menu. Although the respondents are correct that such response was inaccurate because the respondents did correspond with the complainant in writing, the Commission notes that the complainant included copies of such written correspondence with the complaint. Thus, it does not appear that the complainant intended to mislead the Commission with his response to question 12 of the complaint form.

27. At the contested case hearing and in his brief, the complainant also claimed that prior to the request at issue, the respondents either destroyed or improperly failed to retain certain responsive records. However, it is well settled that authority over matters relating to the retention and destruction of public records rests with the Public Records Administrator, pursuant to §§1-18 and 11-8 through 11-8b, G.S., and with the Office of the State's Attorney, pursuant to §1-240, G.S. See *Robert Cushman v. Director, Central Communications, City of Middletown, et al.*, Docket #FIC 2019-0719, ¶22 (Nov. 18, 2020); *David Montoya v. Superintendent of Schools, Westport Public Schools, et al.*, Docket #FIC 2019-0607, ¶17 (June 23, 2021); *James J. Connolly v. Mayor, City of Hartford, et al.*, Docket #FIC 1997-397, ¶12 (April 8, 1998); *Bijan Bahramian v. City and Town of Meriden, et al.*, Docket #FIC 1979-220, ¶6 (Feb. 26, 1980). Accordingly, the Commission lacks authority to address such claim.

28. In his post-hearing brief, the complainant also requested that the Commission order the respondents to (1) make Attorney McHale's entire file available for inspection, and (2) provide him with certified copies of the records that were provided in response to his request. Although it is not entirely clear from his brief, it appears that the complainant requested that the Commission issue such orders, at least in part, so that the complainant can confirm for himself that the respondents provided him with all responsive records.

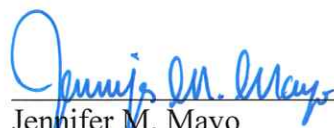
29. Section 1-206(b)(2), G.S., provides in relevant part that "[i]n any appeal to the [FOI] Commission under [§1-206(b)(1), G.S.], the [C]ommission may confirm the action of the agency or order the agency to provide relief that the [C]ommission, in its discretion, believes appropriate to rectify the denial of any right conferred by the [FOI] Act."

30. It is found that the September 1, 2023 request that is at issue in this case, described in paragraph 8, above, did not ask the respondents to provide the complainant with the opportunity to inspect Attorney McHale's file, or to provide him with certified copies of the records that were responsive to his request. It is concluded that absent a finding that the complainant made such requests and that the respondents failed to comply, the Commission lacks authority to order the relief requested by the complainant.<sup>4</sup>

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 August 14, 2024.

  
Jennifer M. Mayo  
Acting Clerk of the Commission

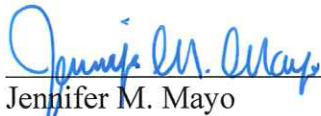
<sup>4</sup> The Commission notes that the complainant is free to submit new requests asking for the opportunity to inspect Attorney McHale's file and for certified copies of the records that he received in response to the request at issue in this case, and to file another appeal with the Commission if the respondents deny such requests.

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:

**PASQUALE SALEMI**, c/o Attorney James F. Sullivan, Logan Vance Sullivan & Kores, LLP,  
733 East Main Street, Torrington, CT 06790

**CHIEF EXECUTIVE OFFICER, METROPOLITAN DISTRICT COMMISSION; AND  
METROPOLITAN DISTRICT COMMISSION**, c/o Attorney Maura A. Mastrony, Littler  
Mendelson PC, 265 Church Street, Suite 300, New Haven, CT 06510



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Acting Clerk of the Commission