

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Breina Schain,

Complainant

against

Docket # FIC 2023-0033

Commissioner, State of Connecticut,
Department of Motor Vehicles; and State of
Connecticut, Department of Motor Vehicles,

Respondents

January 24, 2024

The above-captioned matter was scheduled to be heard as a contested case on May 3, 2023, at 2:30 p.m., at which time neither the complainant nor the respondents appeared.

On May 17, 2023, the Commission issued a Proposed Final Decision in this matter, dated May 8, 2023, in which the hearing officer recommended that the complaint be dismissed for failure to prosecute. The Proposed Final Decision was scheduled to be considered by the Commission at its regular meeting of June 14, 2023. By email dated May 26, 2023, and received and filed by the Commission, on May 30, 2023, the complainant objected to the Proposed Final Decision, indicating that she had not received notice of the hearing scheduled for May 3, 2023. Consequently, such matter was subsequently marked off the June 14, 2023, Commission meeting agenda.

Upon order of the hearing officer, dated June 1, 2023, the above-captioned matter was reopened and a hearing scheduled for October 16, 2023, which was then postponed to November 29, 2023, at which time the complainant and respondents appeared and presented evidence. The complainant testified during the hearing on November 29, 2023; however, the respondents did not bring a witness and provided no testimony.

On December 14, 2023, pursuant to an order of the hearing officer, the respondents filed an after-filed exhibit, which has been marked Respondents' Exhibit 4 (after-filed): Affidavit of Michelle Huggins.

On December 21, 2023, the complainant objected to the Affidavit, disputing the affiant's credibility as well as the substance of the Affidavit.

Upon order of the hearing officer, the parties appeared for a reopened hearing on January 5, 2024, at which time the respondents made Affiant Huggins as well as an additional witness available for direct and cross examination. At the reopened hearing on January 5, 2024, the complainant objected to the holding of the reopened hearing, which objection the hearing officer overruled.

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 20, 2022, and mailed November 23, 2022, the complainant requested that the respondents provide her with a copy of the video recording of an incident involving the complainant that took place when she attempted to renew her motor vehicle registration at the Hamden branch of the Department of Motor Vehicles (“DMV”) for the State of Connecticut on November 17, 2022 (the “Incident”).

3. It is found that, by email dated December 6, 2022, the respondents acknowledged the complainant’s request, described in paragraph 2, above.

4. It is found that, between December 6, 2022 and February 2, 2023, the complainant contacted the Legal Services Division of the DMV on at least four occasions inquiring as to the status of her request.

5. It is found that the complainant also left at least one voicemail for an Assistant Attorney General for the State of Connecticut, who she believed represented the DMV and with whom she had spoken after the Incident. It is found that, on January 10, 2023, she sent him a follow up email indicating that she had not yet received any responsive video recordings.

6. By email dated February 2, 2023, 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.

7. 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.

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 concluded that the requested records, to the extent that they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that the respondent Commissioner forwarded the complainant’s request, described in paragraph 2, above, to the DMV’s email inbox specifically designated for receiving FOI requests as well as to the then Acting Agency Legal Director for the DMV (the “Acting Legal Director”) on November 29, 2022.¹

12. At the reopened hearing in this matter, a Motor Vehicle Analyst for the DMV (the “Analyst”) testified, and it is found, that she managed the department’s FOI email inbox and also tracked, and assisted with the processing of, FOI requests submitted to the department.

13. Although the Analyst managed the FOI email inbox, it is found, that the Acting Legal Director responded to the Commissioner’s November 29, 2022 email, described in paragraph 11, above, stating that she would handle the processing of the complainant’s request.

14. It is found that, on December 2, 2022, the Analyst sent an email to the Acting Legal Director following up on the status of the complainant’s request described in paragraph 2, above.

15. It is found that the Analyst did not receive a response to her December 2nd email and, therefore, on December 6, 2022, the Analyst sent an additional email to the Acting Legal Director asking whether the Acting Legal Director wanted the Analyst to send the complainant an email acknowledgement. It is found that, on December 6, 2022, the Acting Legal Director then instructed the Analyst to send the acknowledgement email to the complainant.

16. It is found that, also on December 6, 2022, the Analyst asked the then Paralegal Specialist in the DMV Legal Services Division (the “Paralegal”) to search for and locate any video footage responsive to the complainant’s request described in paragraph 2, above.

17. It is found that sometime between December 6, 2022 and December 15, 2022, the Paralegal conducted a search for the video recordings.

18. It is found that, on December 15, 2022, the Paralegal located and saved all of the video footage of the Incident (the “Video”). The Paralegal testified, and it is found, that it took her approximately an hour to search for and locate the Video.

19. It is found that the Video originally was recorded in a digital format known as NR3, which was not accessible on computers without a specific computer software program.

¹ The Commission notes that the respondents failed to provide evidence relating the date that the respondent Commissioner first received the complainant’s request. It is found that, pursuant to the receipt of the United States Postal Service, the expected delivery date of the complainant’s request was November 26, 2022, which was a Saturday. Accordingly, it is found that the Commissioner likely did not receive the complainant’s request prior to November 28, 2022.

20. It is found that after recording and saving the Video, the Paralegal attempted to connect with the respondents' Information Technology Department ("IT") to request that IT convert the Video to a MP4 format, which is accessible on almost any computer and does not require a special computer software program.

21. The Paralegal testified, and it is found, that due to scheduling conflicts and intervening vacations and state holidays, she had difficulty connecting with IT. It is found that, the Paralegal followed up with IT on December 28, 2022, but they did not connect until January 11, 2023.

22. It is found that, at some point between January 11, 2023 and January 18, 2023, IT converted the Video to a MP4 accessible format.

23. It is found that, on January 18, 2023, the Paralegal sent an email to the Acting Legal Director, the Assistant Legal Director for the DMV at the time and the Analyst, with a link to access the Video on the department's Secure File Transfer Protocol ("SFTP") site. It is found that, also on January 18, 2023, the Paralegal provided the Analyst with a copy of the Video on a DVD.

24. It is found that, on January 18, 2023, in accordance with the respondent department's protocol at the time, the Analyst contacted the Acting Legal Director to request permission to release the Video to the complainant.

25. It is found that, on or about January 25, 2023, the Analyst followed up with the Acting Legal Director regarding the release of the Video to the complainant, but she did not receive a response.

26. It is found that, on or about February 3, 2023, the Acting Agency Legal Director, the Assistant Legal Director, and the Analyst met to discuss the release of the Video to the complainant and potential privacy concerns.

27. It is found that after the February 3, 2023 meeting, described in paragraph 26, above, the Acting Legal Director indicated that she would handle the response to the complainant's request.

28. It is found that the Acting Legal Director emailed the complainant on February 28, 2023 (twenty-five days after the February 3, 2023 meeting) stating in relevant part the following:

Please recall that part of the delay with this request was ensuring that we understood what video you were trying to obtain, i.e. inside of the building, outside of the video [sic.], etc. With that said, I will take responsibility for any delay, and will ensure that we get your request to you.

29. However, it is found that, well in advance of the Acting Legal Director's February 28, 2023 email, described in paragraph 28, above, the Video had already been identified and converted to an MP4 format and could have easily been disclosed to the complainant.

30. It is found that the Acting Legal Director also emailed the complainant on March 2, 2023 (twenty-seven days after the February 3, 2023 meeting) stating in relevant part the following:

First, I would like to know how you would like the video sent to you. I can try to have the video emailed to you, and we can see if you have the ability to view it; otherwise, I will have to get our IT department involved, and have it copied onto a disk, stick or some other device. With that said, please let me know your preference and I will try to accommodate it.²

31. However, it is found that, well in advance of the Acting Legal Director's March 2, 2023 email, described in paragraph 30, above, IT had already been involved, the Video had already been converted to a format that the complainant could view, the Video already had been saved on the department's SFTP site, a link to which was available, and a DVD had already been created.

32. It is found that the respondents, on March 8, 2023, sent an email to the complainant with a link to access the Video on the SFTP site, and mailed a DVD with a copy of the Video to the complainant on March 10, 2023.

33. It is found that, between December 2022 and March 2023, the complainant followed up numerous times with the respondents via telephone and email regarding the status of her request.

34. Additionally, it is found that the complainant reached out to the Office of the Attorney General for the State of Connecticut regarding the Incident and her request. It is found that, by emails dated February 3, 2023, February 10, 2023, and February 28, 2023, the Deputy Associate Attorney General/Chief of the Consumer Advocacy Section for the Office of the Attorney General informed the complainant that she would reach out to the DMV concerning the Video. It is further found that an Assistant Attorney General forwarded the complainant's November 20th request to the Assistant Legal Director on January 11, 2023, requesting that she forward the request to appropriate personnel to process.

35. At the hearings in this matter, the complainant acknowledged that the respondents provided her with a copy of the Video but contended that the Video did not include all of the pertinent video footage of the Incident and that the respondents failed to provide her with the audio portion of the Video. The complainant also alleged that the respondents were not prompt in providing the Video.

36. With respect to the complainant's claim that the respondents failed to provide her with all responsive video and audio footage, the respondents testified, and it is found, that they searched for video responsive to the complainant's request and located the Video, which was the sole responsive video footage. The respondents additionally testified, and it is found, that the

² It is found that the complainant responded to the March 2, 2023 email the same day indicating that she would like a DVD mailed to her, in addition to an email link.

Video never had an audio portion and that the respondents' security cameras do not record sound.

37. It is found that the respondents conducted a diligent search and provided the complainant with the entirety of the responsive video that existed at the time of the complainant's request.

38. Accordingly, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

39. With respect to the question of promptness, the Commission has held 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 (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. As the court recognized in Commissioner of Dep't of Emergency Servs. & Pub. Prot. v. Freedom of Info. Comm'n, HHBCV186047741, 2020 WL 5540637, at *3 (Conn. Super. Ct. July 2, 2020), a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, and an important duty "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."

40. 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. In addition, common sense and goodwill ought to be the guiding principles.

41. It is found that the complainant's request was not burdensome or voluminous and that it did not require an extensive amount of time to locate and review the responsive Video.

42. At the hearings in this matter, the complainant testified, and it is found, that during the Incident she was accused of improper behavior and, therefore, obtaining a copy of the Video was very important to her. It is further found that the complainant indicated in various communications with the respondents the importance of the Video to her.

43. It is found that, at all relevant times, the Analyst had several other duties unrelated to FOI requests, including but not limited to tasks related to the respondent department's administrative hearings as well as daily meetings concerning the installation of a new database.

44. It is found that, at all relevant times, the Paralegal was required to perform her regular daily duties along with the duties of a Motor Vehicle Program Coordinator for Data Access who had recently retired. Additionally, it is found that the Paralegal had several time sensitive projects, including, but not limited to, tasks relating to the creation of the jury pool list, subpoenas, litigation, and tax assessments.

45. It is found that the respondents did not provide evidence as to the cause of the more than two-week delay between January 18, 2023, the date by which the Video is known to have been converted to the MP4 format, and the February 3, 2023 meeting, aside from general speculation that it could have been the result of scheduling issues.

46. It is found that, even if scheduling issues combined with the Analyst's and the Paralegal's workloads justified the delay in locating and converting the Video, the respondents did not provide any testimony concerning, nor a sufficient explanation for, the more than month delay between the February 3, 2023 meeting, described in paragraph 26, above, and the provision of the Video to the complainant on March 8, 2023 via an email link as well as the mailing of the DVD on March 10, 2023.

47. It is found that the claim that any such delay was related to confusion regarding what video the complainant was seeking is not credible, as described in paragraph 29, above, especially since the Video had been located and converted to an accessible format as of January 18, 2023. Moreover, it is found that the respondents provided no evidence that they sought to promptly clarify any such alleged confusion. It is further found that, in her February 28, 2023 email to the complainant, described in paragraph 28, above, the Acting Legal Director took responsibility "for any delay."

48. It is found that the respondents could have asked the complainant whether she wanted the Video in an email or on a DVD much sooner than March 2, 2023. It is found further that the Acting Legal Director's March 2, 2023 email, described in paragraph 30, above, fails to acknowledge that IT had already been involved and that the Video had already been converted to a format that the complainant could view and a DVD created as of January 18, 2023, as found in paragraphs 22, 23 and 31, above.

49. Based on the facts and circumstances of this case, it is found that the respondents did not act quickly and without undue delay in complying with the request described in paragraph 2, above.

50. Accordingly, it is concluded that the respondents violated the promptness provisions in §§1-210(a) and 1-212(a), G.S., by failing to provide the Video to the complainant promptly.

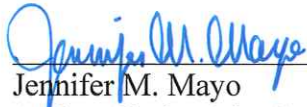
51. During her closing statement at the very end of the reopened hearing, and in a post-reopened hearing filing, the complainant contended that a civil penalty was warranted in this case. This contention was not raised in the complaint.

52. While it is concluded that the respondents should have been more prompt in providing the Video to the complainant, the Commission declines to consider the imposition of a civil penalty based upon the facts and circumstances 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 requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 24, 2024.



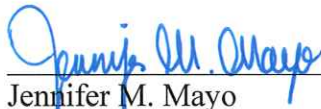
Jennifer M. Mayo
Acting Clerk of the Commission

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:

BREINA SCHAIN, 62 Hilltop Road, Cheshire, CT 06410

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF MOTOR VEHICLES; AND STATE OF CONNECTICUT, DEPARTMENT OF MOTOR VEHICLES, c/o Attorney Michelle C. H. Givens, Department of Motor Vehicles, 60 State Street, Wethersfield, CT 06161



Jennifer M. Mayo
Acting Clerk of the Commission