

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Elijah El-Hajj-Bey,

Complainant

against

Docket # FIC 2023-0334

Department Head, Procurement, City of
Hartford; Procurement, City of Hartford;
and City of Hartford,

Respondents

June 26, 2024

The above-captioned matter was heard as a contested case on February 15, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint. At the request of the complainant, a continued hearing was held on March 12, 2024 for the purpose of allowing the parties to present closing argument. The complainant did not appear for such hearing, but the respondents appeared and presented closing 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 on May 21, 2023, the complainant submitted a request through the respondents' online records request portal ("Portal") for copies of the following records concerning a development project involving the Hartford Hilton ("Project"):
 - (a) the contract and lease with the Waterford Group for the Hilton Hotel;
 - (b) Title VI complaint filed by Elijah El-Hajj-Bey vs. Bay State Services, Capital Region Development Authority with the Procurement Department; and
 - (c) tax deferral agreement for the Project.
3. It is found that by email dated May 22, 2023, the respondents acknowledged the complainant's request.
4. It is found that by email dated June 27, 2023 and filed on June 28, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the request described in paragraph 2, above.

5. 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.

6. 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.

7. 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.”

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

9. It is found that on or around November 17, 2023, the respondents provided the complainant with copies of certain records responsive to his request. It is further found that among such records was an Amended and Restated Ground and Air Space Lease (“Lease”) related to the Project. It is found that by emails dated November 17, 2023 and November 29, 2023, the respondents notified the complainant that the tax deferral agreement that he requested, described in paragraph 2(c), above, was contained within the Lease.

10. At the February 15, 2024 hearing, the complainant acknowledged receiving the records described in paragraph 9, above, but claimed that the respondents did not provide him with the tax deferral agreement described in paragraph 2(c), above.

11. During the February 15, 2024 hearing, the hearing officer raised the issue of whether the complaint was filed within 30 days of the denial, as required for the Commission to maintain jurisdiction over this matter.

12. Following the hearing, pursuant to the order of the hearing officer, the complainant was ordered “to submit a copy of all written or electronic correspondence between the complainant and the respondents related to the request at issue in this case during the time period May 21, 2023 through June 28, 2023.” In response to such order, the complainant submitted copies of certain emails between the complainant and the respondents. However, it is found that

all such emails predated the time frame specified in the order and were unrelated to the request at issue.

13. By order dated February 23, 2024, the complainant was again ordered to “submit a copy of all written or electronic correspondence that the complainant sent to or received from the respondents concerning the May 21, 2023 records request that is at issue in this matter, from the time period **May 21, 2023 through June 28, 2023.**” (Emphasis in original.) It is found that in response to such order, the complainant submitted copies of emails he received from the respondents on May 21, 2023 and May 22, 2023, acknowledging his request. It is further found, however, that the complainant did not submit any evidence that he followed up on his request at any time between the date of such request and the date of the complaint.

14. Section 1-206, G.S., provides in relevant part:

(a) Any 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.***

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency 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 commission. A notice of appeal ***shall be filed not later than thirty days after such denial*** For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.

15. The Supreme Court has held that the FOI Act does not “preclud[e] a party from making successive requests to an agency for the same records,” and therefore that a party may renew a request in order to restart the 30-day appeal period. *Board of Education v. FOI Commission*, 208 Conn. 442, 451 (1988). However, because “the thirty day period for filing a notice of appeal with the [Commission] ... relates to the subject matter jurisdiction of the [Commission],” *Town of West Hartford v. FOI Commission*, 218 Conn. 256, 262 n.5 (1991), failure to file an appeal within 30 days deprives the Commission of jurisdiction.

16. It is found that four business days from the date of the complainant’s May 21, 2023 request was May 25, 2023. It is further found that the respondents did not comply with the complainant’s request by such date, and the complainant did not renew his request at any point

prior to filing the complaint. Accordingly, it is found that the date of the “denial” of the complainant’s request, for purposes of §§1-206(a) and 1-206(b)(1), G.S., was May 25, 2023.¹

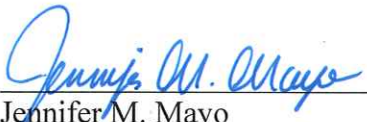
17. It is found that the complainant sent the email containing his complaint on June 27, 2023, which is 33 days after the denial of the complainant’s request. Accordingly, it is found that the complaint was “filed,” within the meaning of §1-206(b)(1), G.S., 33 days after the denial of the request.

18. Based on the foregoing, it is concluded that the Commission lacks jurisdiction over this matter.²

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 June 26, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

¹ During closing argument on March 12, 2024, the respondents stated that they did not believe the appeal was untimely, and that their only defense was that they fully complied with the request. However, because the 30-day time limit set forth in §1-206(b)(2), G.S., implicates the Commission’s subject matter jurisdiction, the Commission is required to address that issue even if it is not raised by the parties. See *Blumberg Associates Worldwide, Inc. v. Brown & Brown of Connecticut, Inc.*, 311 Conn. 123, 161 (2014) (“[tribunal] not only can but must address an issue implicating subject matter jurisdiction whenever it arises, regardless of how the issue comes to the [tribunal]’s attention”).

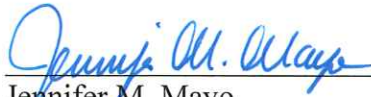
² Notwithstanding this conclusion, the respondents presented credible evidence that they fully complied with the complainant’s request. As noted in paragraph 10, above, the complainant’s sole claim was that the respondents failed to provide him with a copy of the tax deferral agreement described in paragraph 2.(c), above. However, the respondents introduced a copy of the Lease, which contains certain provisions relating to payments to be made to the City of Hartford in lieu of taxes. The respondents testified credibly that they do not maintain any additional records responsive to the complainant’s request for a “tax deferral agreement for the Project.”

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:

ELIJAH EL-HAJJ-BEY, 20 Kenneth Circle, Windsor, CT 06095

DEPARTMENT HEAD, PROCUREMENT, CITY OF HARTFORD; PROCUREMENT, CITY OF HARTFORD; AND CITY OF HARTFORD, c/o Attorney Natalie Spiess, Hartford Corporation Counsel, 550 Main Street, Suite 210, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission