

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

John DiIorio,

Complainant

against

Docket # FIC 2023-0142

Banking Committee, State of Connecticut,  
General Assembly,

Respondent

March 27, 2024

The above-captioned matter was heard as a contested case on December 22, 2023 and January 19, 2024, at which times the complainant and the respondent appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On February 29, 2024, pursuant to the order of the hearing officer, the respondent submitted an affidavit of Beth Waters. Such affidavit has been marked as respondent's Exhibit 4 (after-filed).

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

1. The respondent is a public agency within the meaning of §1-200(1), G.S.
2. By email filed March 31, 2023, the complainant appealed to the Commission, alleging that the respondent violated the Freedom of Information ("FOI") Act by failing to comply with the order in the Commission's final decision in Docket #FIC 2020-0231, *John DiIorio v. Banking Committee, State of Connecticut, General Assembly* (June 23, 2021) ("*DiIorio I*").
3. The Commission takes administrative notice of the administrative record and final decision in *DiIorio I*.

**Procedural History**

4. It is found that on January 17, 2020, the complainant initially requested that the respondent provide him with copies of the following records:
  - (a) For the period from January 1, 2009 - present, all communications between any Department of Banking [{"Department"}] employee, and any member of the Banking Committee, or its staff, relating to Public Act 17-38, also referred to as

SB 906, “An Act Concerning Lead Generators of Residential Mortgage Loans.”  
We are looking for all correspondence, including emails and text messages.

- (b) We make the same request for House Bill HB 05490, also known as Public Act 18-173, and SB 948, Public Act 09-209.

5. It is found that on January 24, 2020, the complainant revised the request described in paragraph 4, above, as follows:

- (a) I temporarily withdraw my request related to the '09 bill. I will resubmit at a later date.
- (b) I have provided you with all Banking Committee legislators from 2014-2018. Please use that list for the Banking Committee member aspect of my request relating to Public Acts 17-38 [Bill No. sSB 906,] and 18-173 [Bill No. HB 05490].
- (c) For [Public Act 17-38, Bill No. sSB 906], I request all communications between Banking Committee members provided; and Matt Smith, Jorge Perez, Carmine Costa, Stacey Serrano, Richard Cortes, Daniel Landini, and any member of the Department's governmental relations and legislative affairs division. Time frame for this request is 2014-2017.
- (d) For [Public Act 18-173, Bill No. HB 05490], all communications between Banking Committee members provided; and Matt Smith, Jorge Perez, Carmine Costa, Stacey Serrano, Richard Cortes, Daniel Landini, and any member of the Department's governmental relations and legislative affairs division. Time frame of this request is 2017-2018.
- (e) For both the 2017 and 2018 bills, I request all letters, memos, testimony, and fiscal notes provided the Committee prior to passage of each bill. I also request all offered amendments for both bills.

6. It is found that on June 23, 2021, the Commission issued the final decision in *DiIorio I*, in which the Commission concluded in relevant part that “the respondent failed to prove that it conducted a timely, diligent search for records responsive to the complainant’s request [and failed to] prove that all records responsive to the complainant’s request were disclosed to the complainant.”

7. In the final decision in *DiIorio I*, the Commission issued the following order (“*DiIorio I* Order”):

- ¶1 No later than 30 days after the rendering of this decision, the respondent shall conduct a thorough search for records responsive to the complainant’s request.
- ¶2 The respondent shall direct a person or persons familiar with the search or searches conducted to prepare an affidavit or affidavits attesting to the

location(s) searched and the results of such search(es). Such affidavits shall be provided to the complainant.

- ¶3 The respondent shall promptly disclose to the complainant any responsive records not previously disclosed and copies of such records shall be provided free of charge.
- ¶4 In the event any records responsive to the complainant's request are withheld, the respondent shall prepare a log describing the records withheld and identifying the exemption to disclosure being claimed.
- ¶5 Henceforth, the respondent shall strictly comply with §§1-210(a) and 1-212(a), G.S.

8. It is found that on July 23, 2021, the respondent provided the complainant with an affidavit by Paul Alderucci, Director of Information Technology Services for the Connecticut General Assembly, attesting to the searches conducted by the respondent for records responsive to the complainant's request.

9. It is found that by letters dated August 4, 2021 and August 17, 2021, the complainant, through counsel, wrote to the Commission alleging that the respondent failed to comply with the *Dilorio I* Order by failing to provide all responsive records and failing to conduct an adequate search for such records.

10. It is further found that by email dated September 1, 2021, the complainant followed up on the letters described in paragraph 9, above. It is found that the hearing officer from *Dilorio I* responded to the complainant's email the same day, stating that the matter was under review and that the parties would be notified if further proceedings were scheduled.

### **Timeliness of the Complaint**

11. At the hearings and in its post-hearing brief, the respondent claimed that the Commission lacks jurisdiction over this matter because the complaint was untimely.

12. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under [§1-210, G.S.] 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 [C]ommission 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....

13. In *Arras v. First Selectman, Town of Woodbury, et al.*, Docket #FIC 2021-0516 (Aug. 24, 2022), the Commission concluded that “there is no requirement in the FOI Act that a complainant file a non-compliance complaint within thirty days of an alleged non-compliance with a final decision of the Commission,” because “any failure to comply with a Commission order would constitute an ongoing violation.”

14. In its post-hearing brief, the respondent contended that the Commission should decline to follow the *Arras* decision because “there is no provision in the [FOI Act] authorizing the Commission to hear complaints of noncompliance filed 20 months after the alleged noncompliance occurred.” Alternatively, the respondent contended that this matter is distinguishable from *Arras* because the *DiIorio I* Order required the respondent to conduct the search for records and provide the complainant with an affidavit detailing such search by a date certain, namely, 30 days after the June 23, 2021 final decision, or July 23, 2021. The respondent claimed that any violation would have occurred when the respondent allegedly failed to comply by July 23, 2021, and that the complainant was required to file his complaint no later than 30 days after such date.

15. It is found that the *DiIorio I* Order required the respondent, among other things, to “promptly disclose to the complainant any responsive records not previously disclosed,” and to provide copies of such records “free of charge.”

16. The Commission has repeatedly concluded that, as used in §§1-210(a) and 1-212(a), G.S., the requirement to provide requested records “promptly” does not impose a set time limit by which an agency must comply. See, e.g., *Boster, et al. v. Chairman, et al.*, Docket #FIC 2008-092, ¶26 (Jan. 14, 2009); *DiRocco v. Hodge*, Docket #FIC 2006-0429, ¶24 (Aug. 8, 2007); *Connecticut Coalition Against Millstone v. Wilds*, Docket #FIC 2005-049, ¶14 (Sept. 14, 2005); Rather, “the issue of promptness is a particularly fact-based question” that “is not reduced to a number of days.” (Quotation marks omitted.) *City of Bridgeport v. FOI Commission*, 222 Conn. App. 17, 51 n.10 (2023), *cert. denied*, 348 Conn. 936 (2024).

17. It is found that the *DiIorio I* Order did not set a specific date by which the respondent was required to provide the complainant with responsive records. Rather, it is found that the order to provide such records “promptly” imposed on the respondent an ongoing obligation to provide the complainant with such records, and that the complainant had a concomitant ongoing right to receive such records. Thus, the respondent’s alleged failure to provide the complainant with such records constituted an ongoing denial of the complainant’s right to receive the records in question.

18. Based on the foregoing, it is concluded that the complaint was not untimely, and that the Commission therefore has jurisdiction over this matter.<sup>1</sup>

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<sup>1</sup> The Commission notes that, based on the August 4, 2021 and August 17, 2021 letters described in paragraph 9, above, the complainant notified the Commission of the alleged deficiencies in the respondent’s search almost immediately after receiving the affidavit described in paragraph 8, above. However, the record does not reflect that any action was taken in response to such letters. Thus, this is not a case in which the complainant acted in a dilatory manner in seeking to enforce the *DiIorio I* Order.

**Whether the Respondent Complied with the *DiIorio I* Order**

19. In the final decision in *DiIorio I*, the Commission made the following findings of fact and conclusions of law relevant to the complainant's claim in this matter:

- ¶5 It is found that Ms. [Beth] Waters is the Executive Assistant to the Executive Director of the Office of Legislative Management ["OLM"], Mr. James Tamburro. It is further found that [OLM] provides administrative and operational support for the Connecticut General Assembly.<sup>[2]</sup> Additionally, it is found that neither Ms. Waters nor Mr. Tamburro were involved in conducting any of the searches for records, nor were either of them involved in reviewing records to determine responsiveness to the complainant's request....
- ¶17 In an email dated June 17, 2020, Ms. Waters informed the complainant that ... the initial search was conducted by the IT department and the search returned [approximately] 700 results .... Ms. Waters explained in the email that such results are then reviewed for responsiveness to determine which are responsive to the complainant's request....
- ¶23 It is found that as of the date of the hearing in [*DiIorio I*], the respondent disclosed close to [100] records in total.
- ¶24 The complainant contended that of the 700 records that were discovered during the initial search, far more records responsive to the request exist.
- ¶25 It is found that Ms. Waters and Mr. Tamburro could not testify as to the thoroughness of the search that was conducted, the parameters of the search conducted, or the reason why certain records were deemed to be not responsive to the complainant's request. Additionally, it is found that Ms. Waters and Mr. Tamburro could not testify as to whether individual Banking Committee members were queried as to the existence of responsive records contained within their paper or electronic files.
- ¶26 Therefore, it is concluded that the respondent failed to prove that it conducted a timely, diligent search for records responsive to the complainant's request nor could the respondent prove that all records responsive to the complainant's request were disclosed to the complainant. Accordingly, it is concluded that the respondent violated §1-212(a), G.S., as alleged by the complainant.

20. With respect to the search conducted by the respondent prior to *DiIorio I*, it is found that Ken Greene, then-Director of Information Technology Services for the General Assembly, searched the email accounts of the respondent's members using the following parameters:

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<sup>2</sup> The respondent testified that, when it receives a request for records of more than one caucus of the General Assembly, OLM generally coordinates the response to such request.

- (a) For the request described in paragraph 5.(c), above, Mr. Greene used the search terms “17-38” OR “Residential Mortgages,” with a timeframe of January 1, 2014 through December 31, 2017;
- (b) For the request described in paragraph 5.(d), above, Mr. Greene used the search terms “18-173” OR “Credit Licenses” OR “Banking Law,” with a timeframe of January 17, 2017 through December 31, 2018.

21. It is found that Mr. Greene used the parameters described in paragraph 20, above, to search the email accounts of the members of each of the four political caucuses that comprise the membership of the respondent (House Democrats, House Republicans, Senate Democrats, and Senate Republicans). It is found that Mr. Greene then provided the records generated as a result of such searches to legal counsel for the respective caucus (“caucus counsel”).

22. It is further found that caucus counsel reviewed the records provided by Mr. Greene to determine which records were responsive to the request. It is found that caucus counsel provided Ms. Waters with the records that caucus counsel determined to be responsive to the request.

23. It is found that prior to the hearing in *DiIorio I*, Ms. Waters provided the complainant with copies of all records that she received from caucus counsel. It is found that neither Ms. Waters nor caucus counsel withheld any of the records that caucus counsel determined to be responsive to the request.

24. It is found that, at the time the Commission issued the *DiIorio I* Order, Mr. Greene was no longer employed by the respondent. It is further found that, in response to the *DiIorio I* Order, the respondent did not conduct any new searches beyond what Mr. Greene conducted prior to *DiIorio I*. Rather, it is found that the respondent instructed Mr. Alderucci to repeat the same search that Mr. Greene conducted prior to *DiIorio I*, using the same parameters described in paragraph 20, above.

25. It is found that Mr. Alderucci identified the search parameters used by Mr. Greene and repeated the same search using such parameters. It is further found that such search did not generate any records that had not been provided to the complainant prior to *DiIorio I*, and that the respondent did not provide the complainant with copies of any additional records as a result of Mr. Alderucci’s search.<sup>3</sup>

26. At the hearing and in his post-hearing brief, the complainant claimed that the respondent failed to comply with the *DiIorio I* Order by failing to provide all records responsive to his request, and by failing to conduct an adequate search for such records.

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<sup>3</sup> The respondent’s witnesses testified that the email accounts of members of the General Assembly are deleted when they leave office, and that the respondent did not preserve the email accounts of any members who left office after the date of the complainant’s request. Thus, the respondent’s witnesses testified that Mr. Alderucci was unable to search the email accounts of members who left office between the date of the complainant’s request and the date of the search.

27. The respondent acknowledged that it did not initially conduct any new searches beyond what Mr. Greene conducted prior to *DiIorio I*. However, the respondent claimed that, unlike in *DiIorio I*, the respondent presented sufficient evidence in this matter to establish that the search conducted by Mr. Greene (and repeated by Mr. Alderucci) was broad enough to locate all records responsive to the complainant's request, and that the respondent provided the complainant with all such records.

28. However, it is found that on or around March 13, 2023, in response to a separate records request that is not at issue, the complainant received copies of certain records that were responsive to the request described in paragraph 5, above. It is found that the respondent did not provide the complainant with copies of such records in response to the request at issue in this matter.

29. Moreover, it is found that in the present matter, the respondent's witnesses did not know who selected the search terms described in paragraph 20, above, and could not testify as to the process by which such terms were selected. It is also found that, as in *DiIorio I*, the respondent's witnesses still "could not testify as to the thoroughness of the search that was conducted, ... the reason why certain records were deemed to be not responsive to the complainant's request ... [or] whether individual Banking Committee members were queried as to the existence of responsive records contained within their paper or electronic files." *DiIorio I*, ¶25.

30. It is further found that the search terms used by the respondent were not reasonably calculated to locate all records responsive to the complainant's request. It is found that, although the complainant requested communications during the years leading up to the passage of the two bills identified in his request, the respondent used the Public Act numbers as search terms, despite acknowledging that the Public Act number is not assigned until *after* a bill is passed by both chambers of the General Assembly. Thus, it is found that 2 of the 5 search terms selected by the respondent were unlikely to return any responsive communications from a significant portion of the timeframe identified in the complainant's request. It is also found that other identifiers, such as the bill numbers and the Legislative Commissioners' Office ("LCO") numbers, would have been assigned prior to the passage of the bills in question.<sup>4</sup> Given the availability of such identifiers and the timeframe of the complainant's request, it is found that it was not reasonable for the respondent to limit its search to the Public Act numbers.

31. It is also found that the respondent failed to prove that the remaining search terms used by the respondent (a single search term with respect to Public Act 17-38, and two search terms with respect to Public Act 18-173), were reasonably calculated to locate all communications responsive to the complainant's request.<sup>5</sup>

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<sup>4</sup> According to a glossary published by the General Assembly, a bill number is "given to each bill by the House or Senate clerk when it is first introduced in a legislative session." An LCO number is "assigned to each item drafted in LCO. Each version of a bill and each amendment has a different LCO number. The number is used to identify versions of a bill or amendments to a bill before they receive their number or letter designations." The Commission takes administrative notice of such definitions.

<sup>5</sup> The Commission takes administrative notice of Public Acts 17-38 and 18-173.

32. The respondent also testified, and it is found, that in September 2023, the respondent conducted additional searches for records responsive to the complainant's request, and that it provided the complainant with 14 responsive records located as a result of such searches. However, it is found that the respondent failed to prove that such searches—which were conducted more than 2 years after the *DiIorio I* Order—located all records responsive to the complainant's request.

33. Based on the foregoing, it is found that the respondent failed to prove that it provided the complainant with copies of all records responsive to the request described in paragraph 5, above.

34. Accordingly, it is concluded that the respondent violated the FOI Act by failing to comply with the *DiIorio I* Order.

### Civil Penalty

35. In his post-hearing brief, the complainant requested, for the first time, that the Commission impose a civil penalty against the respondent.

36. At the time of the complaint, §1-206(b)(2), G.S., provided in relevant part:

[U]pon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and *after the custodian or other official directly responsible for the denial has been given an opportunity to be heard* at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.<sup>6</sup> (Emphasis added.)

37. Because the complainant did not raise the issue of a civil penalty until after the contested case hearing was closed, the respondent was not afforded an opportunity to be heard on such request, as required by §1-206(b)(2), G.S.

38. Based on the foregoing, the Commission in its discretion declines to consider the imposition of a civil penalty in this matter.<sup>7</sup>

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<sup>6</sup> Section 1-206(b)(2), G.S., has since been amended to increase the maximum civil penalty to \$5,000.

<sup>7</sup> The complainant also requested that the Commission order the respondent to reimburse him for all attorney's fees incurred in connection with *DiIorio I*. The Supreme Court has long held "that attorney's fees and ordinary expenses and burdens of litigation are not allowed to the successful party absent a contractual or statutory exception.... Because we must respect the legislative prerogative of choosing the special circumstances under which [attorney's fees] awards may be made ... we require a clear expression of the legislature's intent to create a statutory exception [to the rule]." (Citation omitted.) *Ames v. Commissioner of Motor Vehicles*, 267 Conn. 524, 532-33 (2004). Because nothing in the FOI Act authorizes the Commission to award attorney's fees in connection with a contested case, the Commission declines to consider the complainant's request for attorney's fees.

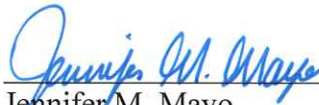


The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within 60 days of the notice of final decision in this matter, the respondent shall conduct a thorough search for records responsive to the request described in paragraph 5 of the findings and conclusions, above, and provide the complainant with copies of such records, free of charge. In conducting such search, the respondent shall ensure that, in addition to email communications, a search is conducted of the paper files, electronic files, and text messages of the respondent's members that were identified by the complainant in the list described in paragraph 5(b) of the findings and conclusions, above, to the extent the respondent maintains such records.
2. Within 60 days of the notice of final decision in this matter, the respondent shall provide the complainant with an affidavit attesting to the details of the search described in paragraph 1 of this order, including the search terms used, the location(s) searched, and the results of such searches.
3. Within 45 days of the notice of final decision in this matter, the respondent shall contact the Bureau of Information Technology Services ("BITS") within the Department of Administrative Services ("DAS") and inquire as to the propriety and feasibility of BITS conducting a search for responsive communications between the employees of the Department of Banking identified in paragraphs 5(c) and 5(d) of the findings and conclusions, above, and the former members of the respondent whose email accounts were deleted after the date of the complainant's request. Such former members are identified in Exhibit 4 (after-filed).
4. If BITS is unable to perform the search described in paragraph 3 of this order, the respondent shall provide the complainant with an affidavit averring that BITS was unable to perform such search. Such affidavit shall be provided within 60 days of the notice of final decision in this matter.
5. If BITS is able to perform the search described in paragraph 3 of this order, the respondent shall provide the complainant with copies of any responsive records, free of charge, within 15 days after receiving such records from BITS. If no responsive records are located by BITS, the respondent shall provide the complainant with an affidavit averring that no responsive records were located by BITS.
6. In complying with paragraphs 1 through 5 of this order, the respondent may only withhold responsive records, or portions thereof, that are mandatorily exempt from disclosure. The respondent shall not withhold any responsive records based on any permissive exemption.
7. In the event that the respondent withholds any responsive records, the respondent shall provide the complainant with a privilege log describing each record withheld, and identifying the legal basis for withholding each such record.

8. Within 30 days of the notice of final decision in this matter, the respondent shall contact the Commission to schedule a training session for its members and staff, to be conducted by a staff member of the Commission on a date thereafter. The Commission urges staff of the Office of Legislative Management to attend such training.
9. The Commission urges the respondent to implement a policy designed to ensure that any records potentially responsive to a pending public records request will not be deleted until such request is satisfied and any appeals related to such request are exhausted.
10. Henceforth, the respondent shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 27, 2024.



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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:

**JOHN DIORIO**, c/o Attorney Ann H. Rubin, Carmody Torrance Sandak & Hennessey LLP, 50 Leavenworth Street, Waterbury, CT 06702 and Attorney Eric J Herst, Carmody Torrance Sandak Hennessey LLP, 50 Leavenworth Street, PO Box 1110, Waterbury, CT 06721-1110

**BANKING COMMITTEE, STATE OF CONNECTICUT, GENERAL ASSEMBLY**, c/o Assistant Attorney General Timothy J. Holzman, Office of the Attorney General, 165 Capitol Avenue, 5th Floor, Hartford, CT 06106

  
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Jennifer M. Mayo  
Acting Clerk of the Commission