

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Adam Osmond,

Complainant

against

Docket # FIC 2023-0211

Public Records Administrator, State of
Connecticut, Office of the Public Records
Administrator; and State of Connecticut,
Office of the Public Records Administrator,

Respondents

March 27, 2024

The above-captioned matter was heard as a contested case on November 7, 2023, 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. It is found that by email dated November 14, 2021, the complainant inquired with the respondents regarding the status of a complaint he filed in 2019, wherein he alleged that public records were destroyed by the Connecticut Department of Economic and Community Development (“DECED”). It is found that the complainant simultaneously requested that the respondents provide him with “any and all documents related to [his] complaints with [the respondents] including any investigation that [the respondents] conducted.”
3. It is found that by letter dated November 24, 2021, the respondents acknowledged receipt of the request, and apologized for not issuing a response to the complaint he filed in 2019. It is also found that the respondents provided the complainant with an explanation of their determination regarding the 2019 complaint, and copies of records disposition forms that were responsive to the request described in paragraph 2, above.
4. It is found that, by email dated November 28, 2021, the complainant requested that the respondents acknowledge his request for records described in paragraph 2, above. It is found that the complainant did not acknowledge receipt of the records disposition forms that were provided to him, as described in paragraph 3, above.

5. It is found that, after receiving the complainant's reply, by email dated November 29, 2021, the respondents asked the complainant to provide "a detailed list" of the records that he was still seeking.

6. It is found that, by email dated December 12, 2021, the complainant replied again, restating his request, as described in paragraph 2, above, and explained "I'm asking for all public records related to me or my complaints that your agency has."

7. It is found that, by emails dated May 15, 2022, and December 31, 2022, the complainant inquired with the respondents regarding the status of the request described in paragraph 2, above.

8. It is found that, by email dated January 5, 2023, the respondents replied, apologized for the delay, explained that the office was "very short-staffed," and that compliance with the request would be a "top priority."

9. It is found that, by email dated March 26, 2023, the complainant again inquired with the respondents about the status of the request described in paragraph 2, above. It is found that, by email dated March 28, 2023, the respondents replied indicating that the request would be "worked on" that week.

10. It is found that by emails dated April 28, 2023, and May 1, 2023, the respondents provided the complainant with additional records responsive to the request described in paragraph 2, above. It is further found that the respondents notified the complainant that they withheld certain responsive records, contending that such records were exempt from disclosure pursuant to the attorney-client privilege. It is also found that in the May 1, 2023 email, the respondents informed the complainant that they considered his request, described in paragraph 2, above, fulfilled and closed.

11. By complaint filed May 9, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records.¹

12. 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,

¹ In the complaint, the complainant requested that the Commission investigate whether the respondents conducted an appropriate review of his complaint alleging that the DECD improperly destroyed public records. However, the FOI Commission is not authorized to investigate the respondents with respect to their review of the complainant's complaint against DECD. The Commission is a creature of statute and can only administer and enforce the FOI Act. Therefore, such request for relief will not be addressed further herein.

videotaped, printed, photostated, photographed or recorded by any other method.

13. 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.

14. 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.”

15. 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.

16. It is found that, in the weeks preceding the contested case hearing in this matter, the respondents located handwritten notes, drafted by a former employee, in an unoccupied office. It is found that, upon review, the respondents determined that such records were responsive to the request described in paragraph 2, above. It is found that the respondents provided a copy of the handwritten notes to the complainant on November 6, 2023.

17. At the hearing, the complainant contended that the records responsive to the request described in paragraph 2, above, were improperly withheld, all responsive records had not been provided, and the respondents failed to disclose records to him in a prompt manner.

18. With respect to the complainant’s contention that responsive records were improperly withheld by the respondents, immediately following the hearing, the respondents submitted copies of two pages of records for in camera inspection, along with an Index to Records Submitted for In Camera Inspection (“Index”). Such records shall hereinafter be identified as IC-2023-0211-001 lines 1 through 7, and IC-2023-0211-002 Sections A and B. On the Index, the respondents claimed that IC-2023-0211-001 lines 1 through 7, and IC-2023-0211-002 Sections A and B are exempt from disclosure pursuant to §1-210(b)(10), G.S.

19. With respect to the contention that IC-2023-0211-001 lines 1 through 7, and IC-2023-0211-002 Sections A and B are exempt from disclosure pursuant to §1-210(b)(10), G.S., such exemption provides, in relevant part, that nothing in the FOI Act requires the disclosure of “communications privileged by the attorney-client relationship.”

20. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the attorney-client privilege. That law is set forth in *Maxwell v. FOI Commission*, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public

agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” *Id.*, 149.

21. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice....

22. The Supreme Court has further stated that, “[i]n Connecticut, the attorney-client privilege protects both the confidential giving of professional advice by an attorney acting in the capacity of a legal advisor to those who can act on it, as well as the giving of information to the lawyer to enable counsel to give sound and informed advice.” *Olson v. Accessory Controls and Equipment Corp.*, 254 Conn. 145, 157 (2000).

23. After careful in camera inspection, it is found that IC-2023-0211-001 lines 1 through 7, and IC-2023-0211-002 Sections A and B constitute email communications between an attorney of the Office of the Attorney General, which serves as counsel to the respondents, and an employee of the respondents. It is also found that such communications relate to legal advice sought by the respondents. It is found that the in camera records were transmitted in confidence and that the respondents have not waived the attorney-client privilege.

24. Based on the foregoing, it is found that IC-2023-0211-001 lines 1 through 7, and IC-2023-0211-002 Sections A and B constitute attorney-client privileged communications within the meaning of §1-210(b)(10), G.S. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., when they did not provide copies of such records to the complainant.

25. With respect to the contention that all non-exempt records responsive to the request described in paragraph 2, above, have not been provided, it is found, based on the credible testimony of the respondents’ witness, the respondent Public Records Administrator, that the respondents conducted a reasonable and diligent search for records and have provided to the complainant all non-exempt records that are responsive to the request described in paragraph 2, above.

26. It is therefore concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., of the FOI Act, as alleged in the complaint.

27. Finally, with respect to the contention that the respondents did not provide records in a prompt manner, this Commission has previously opined that the word “promptly” in §1-210, G.S., means “quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel

time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

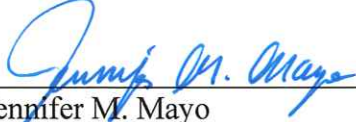
28. At the hearing, the respondents acknowledged, and it is found, that there was delay with respect to compliance with the complainant's request. The respondents attributed the delay to their initial misunderstanding of the complainant's request, staffing issues, and the impact of the COVID-19 pandemic on office operations. It is found, however, that the complainant clarified his request within days of the respondents' request that he do so. It is also found that the complainant made several attempts to inquire about the status of his pending request, but the respondents did not always acknowledge receipt or respond to the complainant. It is also found that seventeen months passed before the respondents provided the complainant with copies of additional responsive records, and five months later, located and provided the complainant with a copy of one additional responsive record. It also found that the number of responsive records was not voluminous and that the respondents provided the complainant with approximately one dozen PDF files that were responsive to the complainant's request.

29. Based on the foregoing, it is found that the respondents failed to prove that they "quickly and without undue delay," provided the complainant with records responsive to his request. It is therefore concluded that the respondents violated the promptness requirements of §§1-210(a) and 1-212(a), G.S., as alleged in the complaint.

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 March 27, 2024.



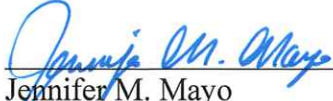
Jennifer M. Mayo
Acting Clerk of the Commission

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:

ADAM OSMOND, PO Box 1162, Farmington, CT 06034-1162

PUBLIC RECORDS ADMINISTRATOR, STATE OF CONNECTICUT, OFFICE OF THE PUBLIC RECORDS ADMINISTRATOR; AND STATE OF CONNECTICUT, OFFICE OF THE PUBLIC RECORDS ADMINISTRATOR, c/o Attorney Laura Thurston, Office of the Attorney General, 165 Capitol Avenue, Hartford, CT 06106



Jennifer M. Mayo
Acting Clerk of the Commission