

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Benjamin Lipp,

Complainant

against

Docket #FIC 2023-0352

Director of Public Records,
State of Connecticut, University
of Connecticut; and State of
Connecticut, University of
Connecticut,

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on January 3, 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. It is found that, by email dated April 6, 2023, the complainant requested that the respondents provide him with copies of the following:
 1. Emails sent to and from Stephen Marchillo between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 2. Emails sent to and from Nicole Ariyavatkul between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 3. Emails sent to and from Christine Mosman between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due

- to noncompliance with any or all university policies pertaining to Covid-19;
4. Emails sent to and from Lori Masters between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 5. Emails sent to and from David D'Alessandro between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 6. Emails sent to and from Carl Lejuez between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 7. Emails sent to and from Susan Oronato between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 8. Emails sent to and from Eleanor JB Daughtery between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 9. Emails sent to and from Sheyda Younessi between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 10. Emails sent to and from Samantha Bolduc between 11/01/2021 and 12/31/2021 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 11. Emails sent to and from Lillian Bosques between 9/25/2022 and 12/31/2022 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 12. Emails sent to and from Jennifer Burckardt between 9/25/2022 and 12/31/2022 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19;
 13. Emails sent to and from Radenka Maric between 9/25/2022 and 12/31/2022 regarding cancellation of and/or holds on student accounts due

to noncompliance with any or all university policies pertaining to Covid-19; and

14. Emails sent to and from Rachel Rubin between 9/25/2022 and 12/31/2022 regarding cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19.

3. It is found that, by email dated April 6, 2023, the respondents acknowledged the complainant's request.

4. It is found that, by second email dated April 6, 2023, the respondents requested that the complainant provide them with search terms. It is found that the respondents also informed the complainant that personally identifiable student information contained in any of the responsive records would be redacted pursuant to the Family Educational Rights and Privacy Act ("FERPA"). It is found that the respondents also informed the complainant that, if he was a student and he wanted to receive information about himself, he could file a FERPA request.

5. It is found that, by email dated April 6, 2023, the complainant requested that the respondents "explain in detail the exact process" they use to organize and access emails. It is further found that the complainant questioned the respondents need for search terms. It is further found that the complainant stated that he expected to receive every email that contains FERPA protected information with such information redacted. Finally, it is found that, with regard to the information the respondents provided regarding the complainant's ability to make a FERPA request, the complainant replied: "I am not a student. I am a Husky..." In this regard, it is found that the complainant was making the request for records from the respondents as if he were UConn's mascot, Jonathan the Husky.

6. It is found that, by email dated April 18, 2023, the complainant sent the respondents the following revised request for copies of records:

1. Emails and all attachments sent to and from Stephen Marchillo between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
2. Emails and all attachments sent to and from Nicole Ariyavatkul between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
3. Emails and all attachments sent to and from Christine Mosman between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
4. Emails and all attachments sent to and from Lori Masters between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";

5. Emails and all attachments sent to and from David D'Alessandro between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
6. Emails and all attachments sent to and from Carl Lejuez between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
7. Emails and all attachments sent to and from Susan Oronato between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
8. Emails and all attachments sent to and from Eleanor JB Daughtery between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
9. Emails and all attachments sent to and from Sheyda Younessi between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
10. Emails and all attachments sent to and from Samantha Bolduc between 11/01/2021 and 12/31/2021 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
11. Emails and all attachments sent to and from Lillian Bosques between 9/25/2022 and 12/31/2022 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
12. Emails and all attachments sent to and from Jennifer Burckardt between 9/25/2022 and 12/31/2022 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
13. Emails and all attachments sent to and from Radenka Maric between 9/25/2022 and 12/31/2022 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
14. Emails and all attachments sent to and from Rachel Rubin between 9/25/2022 and 12/31/2022 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
15. Emails and all attachments sent to and from Radenka Maric between 3/1/2023 and 4/18/2023 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption";
16. Emails and all attachments sent to and from Daniel D. Toscano between 3/1/2023 and 4/18/2023 containing the search terms "test" and/or "hold" and/or "Covid" and/or "lift" and/or "exemption"; and

17. Emails and all attachments sent to and from Andrea Dennis-LaVigne between 3/1/2023 and 4/18/2023 containing the search terms “test” and/or “hold” and/or “Covid” and/or “lift” and/or “exemption”.¹

7. It is found that, by email dated April 19, 2023, the respondents informed the complainant that there were over 13,000 records responsive² to the revised request set forth in paragraph 6, above, all of which would have to be reviewed for exemptions prior to disclosure. It is further found that the respondents informed the complainant that such a review process would take months. Accordingly, it is found that the respondents requested that the complainant narrow his request so that the respondents could provide him with the records he wanted as soon as possible.

8. It is found that, by email dated April 19, 2023, the complainant responded to the respondents’ request as follows:

...I made 17 separate requests. On average, each individual request would be returning 764 emails, a reasonable amount given the timeframe and the subject matter of interest. Each of our numbered requests should be treated independently and released as they are each processed. In order to avoid a single voluminous request, we intentionally requested records in this matter. Additionally, if the voluminous response is partly due to duplicates, that should not be considered as additional processing time. Notwithstanding the foregoing, I am willing to revise our requests. For requests 1-14, you may replace the search term “test” with “testing” and you may omit the term “lift.” Changing “test” to “testing” should significantly reduce responsive emails for that word. However, all search terms should still be used in “and/or” fashion. For requests, 15-17, you may omit “policy,” change “require” to “requirement” and change “recommend” to “recommendation.”

It is further found that the complainant insisted the respondents retain the “and/or” connector.

9. It is found that, by a second email dated April 19, 2023, the complainant further informed the respondents that, with regard to requests 16 and 17, the respondents could omit the search term “trustees,” but requested that they keep such search term for request 15. It is further found that the complainant again insisted the respondents retain the “and/or” connector.

¹ It is found that the complainant signed the revised request as, “Bark, Joannthan (sic) Husky.”

² It is found that, based upon the testimony elicited at the hearing, what the respondents meant to say in their April 19, 2023 email was that there were over 13,000 records *potentially* responsive to the revised request set forth in paragraph 6, above.

10. It is found that, by email dated April 21, 2023, the respondents informed the complainant that they had received the amendments set forth in paragraphs 8 and 9, above, with regard to the amended request set forth in paragraph 6, above.³

11. It is found that, by email dated April 24, 2023, the respondents informed the complainant that they were not able to use “and/or” as a connector; it must be one or the other. It is therefore found that the respondents requested that the complainant revise this aspect of his request.

12. It is found that, by email dated April 27, 2023, the complainant inquired with the respondents as follows: “[w]ould you be able to process the 4/18/2024 requests in such a way that retrieves records which include one or any number of search terms? If not, we’re happy to send individual requests for each recipient and search term.”

13. It is found that, by email dated April 28, 2023, the respondents informed the complainant that they could use all of the search terms that he had provided but in between such terms they need to use “and” or “or” because they could not use “and/or” as a connecting term as the complainant had requested.

14. It is found that, by email dated April 28, 2023, the complainant responded to the respondents as follows:

... We have already defined the records we seek in a manner that UConn can find responsive records. Regardless of whether the search engine you are utilizing allows “and/or” to be used, you are still capable of fulfilling the request. Each request could be broken up one “search term” at a time. If you prefer, I will submit approximately 69 new record requests, with each having only one “search term.” Alternatively, you can process our requests as currently submitted on 4/18/2023. Please let me know what UConn prefers.⁴

15. It is found that, by second email dated April 28, 2023, the complainant reminded the respondents that the revised request set forth in paragraph 6, above, incorporates the amendments thereto set forth in paragraphs 8 and 9, above.

16. It is found that, by email dated May 1, 2023, the complainant requested that the respondents provide him with a status update regarding the processing of his request. It is further found that the complainant stated the following:

Our 4/18 requests were submitted two weeks ago tomorrow. In order to ensure our requests are being

³ It is found that, by email dated April 21, 2023, the complainant replied: “Woof-hoo!”

⁴ It is found that the complainant signed this email as follows: “My most grateful growl, Jonthan (sic) Husky, He/Husky.”

processed in a reasonable time, I expect to receive responsive records to at least one of our requests no later than 5/8/2023....

17. It is found that, by a second email dated May 1, 2023, the complainant stated the following:

Additionally, I am concerned when you said the 13,000 emails would take months to process....UConn has a legal obligation to release these records as quickly as reasonably possible...If the requests aren't processed in a reasonable fashion, we will have no choice but to seek the aid of the [Commission]. Please just be transparent about your timelines and set expectations so that we are on the same page....

18. It is found that, on May 5, 2023, the respondents informed the complainant that they ran the revised request, set forth in paragraph 6, above, in conjunction with the additional revisions set forth in paragraphs 8 and 9, above, and in conjunction with the "and/or" connector insisted upon by the complainant. It is further found that the respondents informed the complainant that the search resulted in some responsive records, which were being reviewed for exemptions and that the respondents hoped to provide the records to the complainant by May 15, 2023.

19. It is found that, by email dated May 9, 2023, the complainant informed the respondents that he wanted to revert back to the revised request set forth in paragraph 6, above, (apparently no longer in conjunction with the supplemental revisions set forth in paragraphs 8 and 9, above,) which resulted in over 13,000 potentially responsive records. See ¶ 7, above.

20. It is found that, by email dated May 12, 2023, the respondents informed the complainant that they were working on compiling the responsive records using the "or" connector and would contact the complainant once the records were ready to be disclosed.

21. It is found that, by email dated May 26, 2023, the complainant sought a status update with regard to the processing of his request set forth in paragraph 6, above.⁵

22. It is found that, by email dated May 26, 2023, the respondents informed the complainant that they were still reviewing records and that they expected to have a first batch of records ready for him shortly.

23. It is found that, on or around June 28, 2023, the complainant telephoned Megan Philippi, UConn's Director of Public Records, and left her a voicemail, in which he simply *barked like a dog for a minute or more* but did not speak any actual words.

⁵ It is found that the complainant signed this email as, "Joannthan (sic) Husky (S/He Husky), Chief Treat Officer, Ph.D., Husky & Husky LLK / Limited Liability Kennel."

24. It is found that, by email dated June 29, 2023, the complainant sent Director Phillippi and Tysen Kendig, UConn's Vice President, the following communication:

I know that we were on the high horses yesterday talking about "threats" (classic higher education conflating threats with a legal/administrative nature with threats of violence, i.e., "silence is violence") and rudeness (when I was the one being ignored for weeks on end by UConn). But reframing the truth is to be expected from someone who does it professionally, so that's okay.

Ms. Phillippi, I am very sorry if you thought my playful "barking" voicemail was "threatening." It should have been quite obvious it was another pun relating to my pseudonym. Additionally, you only got a voicemail because you outright ignored my polite requests for updates for weeks on end....

Ms. Phillippi, I think that you have demonstrated a great deal of disrespect for the FOI Commission. I gave you multiple deadlines...and said that we would go to the commission if we did not get a response. You didn't even confirm our emails. You were perfectly fine with allowing me to go to the commission and waste my time and, more importantly, their time. I find that incredibly disrespectful and unprofessional and I feel the commission would not be happy with you...So that's why we have a new plan today so we can all be on the same page. You clearly need boundaries. Please respond by EOD with both 300 emails and how many emails I can expect each week going forward. Alternatively, you can propose your own schedule for release, and I can see if it's acceptable and prompt; I'm extremely flexible when I see that an effort is actually being made....⁶

25. It is found that, by email dated June 29, 2023, the respondents provided the complainant with records responsive to the first five requests set forth in paragraph 6, above. It is further found that the respondents informed the complainant that a second batch of responsive records would be provided to him on or before July 13, 2023.

26. It is found that, by email dated July 3, 2023, the respondents' general counsel sent the complainant the following communication:

⁶ The Commission notes that the complainant sent the respondents numerous additional emails that are not referenced in this decision, but which are contained in the record evidence submitted by the respondents. See Ex. A. It is found that most of the complainant's emails are directed to Ms. Phillippi. It is further found that many of the complainant's emails are rude, aggressive, and generally inappropriate.

I have reviewed your various emails to UConn's Director of Public Records, Megan Phillippi, as well as those more recently sent to UConn's VP and AVP for communications, Tysen Kendig and Mike Kirk. Please note that as a state agency, UConn is obligated to comply with the Connecticut Freedom of Information ("FOI") Act... While the [FOI Act] requires that UConn promptly respond to requests for public records..., it does not require that UConn or any of its employees respond to questions, demands or ultimatums. Director Phillippi is and will continue to respond to your request for records promptly, within the limits of available resources. As she previously explained to you, your initial request was extremely broad, which is why she worked with you to identify search terms. Using those search terms, steps are taken to identify potentially responsive records. Once those potentially responsive records are identified, they must be carefully reviewed to confirm that they are in fact responsive. Every record must be further reviewed to ensure any information that UConn may be prohibited from disclosing is redacted and/or withheld. UConn will continue to undertake the above efforts in response to your initial and subsequent requests. UConn's production of responsive records will be in keeping with its practices and not in response to randomly assigned deadlines or ultimatums.... While Director Phillippi will continue to respond to your requests at this time, neither she nor other UConn employees to whom you direct rude and increasingly badgering correspondence will be responding to that correspondence. Further, UConn will not hesitate to pursue all remedies available to it, if it determines such conduct has risen to the level of legal harassment and/or the requests are merely vexatious....

27. By email dated and filed July 7, 2023, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with the requested records referenced in paragraph 6, above.

28. 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.

29. 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.

30. 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.”

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

32. It is found that, by the time of the contested case hearing, the respondents had provided the complainant with multiple batches of responsive records. However, the complainant contended that there should be more records responsive to his revised request set forth in paragraph 6, above.

33. Director Philippi appeared at the contested case hearing and testified on behalf of the respondents.

34. Based upon the testimony of Director Philippi, it is found that, on July 13, 2023, the respondents provided the complainant with records responsive to requests six through nine set forth in paragraph 6, above, and informed the complainant that there were no records responsive to request 10 set forth in paragraph 6, above. It is further found that, on August 23, 2023, the respondents provided the complainant with additional records responsive to the first request set forth in paragraph 6, above. It is further found that, on September 20, 2023, the respondents provided the complainant with additional records responsive to the fifth request set forth in paragraph 6, above. It is further found that, on October 26, 2023, the respondents provided the complainant with records responsive to requests eleven through seventeen set forth in paragraph 6, above. In total, it is found that the respondents provided the complainant with 901 pages of records, free of charge.

35. Accordingly, it is found that the respondents conducted a thorough search for responsive records and provided all responsive records to the complainant. See ¶ 38, n.7, below.

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

37. With regard to whether the respondents have acted promptly in responding to the instant request, 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.

38. While the Commission realizes that the parties disagree as to whether all responsive records have been provided to the complainant, it is found that the amount of work the respondents performed to produce the records that have been disclosed to the complainant as of the date of the hearing in this matter is extraordinary.⁷ It is also found that, following the request in the instant matter, the complainant filed ten additional requests for records with the respondents. It is found that, by the time of the contested case hearing, in addition to the records disclosed in the instant matter, the respondents had satisfied three of the additional requests for records. It is further found that Director Philippi spent at least thirty hours reviewing and redacting over 13,000 records in this case,⁸ and spent an additional ten hours processing the three additional requests that the complainant filed. It is also found that Director Philippi only has one other individual who assists her with processing FOI requests. In addition, it is found that, at the time the instant request was received, the respondents had at least 40 pending FOI requests. Moreover, the Commission notes that the time it took the respondents to provide the requested records to the complainant can be attributed, in large part, to the complainant's behavior. The complainant did not cooperate with the respondents, even refusing to choose between having the respondents run his request using connector "and" or the connector "or." Finally, the complainant's tone and general demeanor toward the respondents (i.e., barking into Director Philippi's voicemail like a dog) did not facilitate the processing of the request. In fact, the complainant's behavior was so inappropriate that the respondents' general counsel felt the need to address such conduct and encourage the complainant to be more respectful in his

⁷ The complainant contends that he should have received all 13,000 plus emails that the respondents informed him were responsive to his request set forth in paragraph 6, above. It is found, however, that the request set forth in paragraph 6, above, was not made in a vacuum. The complainant's original request, set forth in paragraph 2, above, requested emails and attachments from fourteen individuals concerning "cancellation of and/or holds on student accounts due to noncompliance with any or all university policies pertaining to Covid-19." The request set forth in paragraph 6, above, concerned the same fourteen individuals and used the exact same timeframes, but included new requests for emails and attachments from three additional individuals. It is found that it was reasonable for the respondents to read the requests together, with the request set forth in paragraph 2, above, informing the revised request set forth in paragraph 6, above. In this regard, it is found that the respondents provided the complainant with all of the records that fell within the parameters of the request set forth in paragraph 6, above, and which concerned the subject matter initially specified by the complainant in the original request set forth in paragraph 2, above. Given the time and energy that the respondents have expended in providing records to the complainant in this case, if the complainant desires the records that the respondents have deemed non-responsive, he is free to submit a new request for such records.

⁸ It is found that the respondents made redactions pursuant to §1-210(b)(2), G.S.; §1-210(b)(10), G.S.; and §1-210(b)(17), G.S. It is further found that the complainant did not challenge any of the redactions.

communications with Director Philippi.

39. Overall, it is found that the respondents have worked diligently in this case and in accordance with the promptness criteria set forth in Advisory Opinion #51.

40. It is concluded that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., in this case.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 22, 2024.




Molly E. Steffes
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:

BENJAMIN LIPP, 9511 Loveland Madeira Road, Unit 1, Loveland, OH 45140

DIRECTOR OF PUBLIC RECORDS, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT, c/o Attorney Ralph E. Urban and Attorney Nathan P. LaVallee, Office of the General Counsel, University of CT, 343 Mansfield Road, Unit 1177, Storrs, CT 06269



Molly E. Steffes
Acting Clerk of the Commission