

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Ward,

Complainant

against

Docket #FIC 2024-0096

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

January 22, 2025

The above-captioned matter was heard as a contested case on August 27, 2024, October 29, 2024, and January 7, 2025, at which times the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon J.). The Commission takes administrative notice of the findings and conclusions in Docket #FIC 2023-0346, Michael Ward v. Chief, Police Department, City of Stamford; Police Department, City of Stamford; and City of Stamford (June 12, 2024).

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 January 28, 2024, the complainant requested copies of every email for June 1, 2023 through January 28, 2024, by and between: (i) Attorney Zigich and Attorney Rosenberg; (ii) Department of Emergency Services and Public Protection (“DESPP”) Commission Ronnell Higgins and Attorney Rosenberg; and (iii) former DESPP Commissioner James Rovella and Attorney Rosenberg (hereinafter the “January 28 request”).

3. By letter of complaint received and filed on February 14, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him all records responsive to his January 28 request.¹

4. It is found that on February 21, 2024, the complainant followed up with the respondents regarding his January 28 request.

5. It is found that on March 5, 2024, the respondents replied to the complainant and disclosed several records in response to the complainant’s January 28 request which had been either partially or completely redacted (hereinafter, the “March 5 disclosure”).

6. It is found that on May 30, 2024, the respondents requested a safety determination letter from the Commissioner, Department of Administrative Services (“DAS”) pursuant to §§1-210(b)(19) and 1-210(d), G.S., concerning the disclosure of the records requested in the complainant’s January 28 request.² It is further found that, in their letter, the respondents explained to the DAS that they believed disclosure of the requested emails could cause a safety risk to Attorney Rosenberg and other DESPP staff members.

7. It is found that the DAS reviewed the respondents’ request for a safety risk determination, as described in paragraph 6, above, consulted with the respondents and considered whether reasonable grounds existed to exempt the requested records. It is further found that by letter dated January 10, 2025³, the DAS informed the respondents in relevant part, as follows:

[The respondents] provided emails and narratives which demonstrate that releasing the [requested] records would allow the requester to harass and threaten other individuals mentioned within the communications. These reasons demonstrate that the disclosure of such records would create a risk of harm as contemplated by [§1-210(b)(19), G.S.].

¹ The complainant also alleges that the respondents did not provide him with certain incident reports as well as “all emails between [Commissioner] Higgins and [Attorney] Zigich with Ward [as the] subject. . . .” At the second continued hearing, the complainant clarified that the only request at issue in this matter was his January 28 request. Neither the incident reports nor the emails between Commissioner Higgins and Attorney Zigich were included in the complainant’s January 28 request. Accordingly, consideration of such records are not properly before the Commission in this matter.

²Pursuant to §1-210(d), G.S., “any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any reasons described under subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch agency . . . that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section , exclusively” Accordingly, the Commission’s practice is to name DAS as a party in cases where it issued a safety determination letter that was requested by another public agency. DAS was not added as a party in this matter because the respondents did not inform the Commission that they were seeking a safety determination letter from DAS until the second continued hearing on January 7, 2025.

³Pursuant to an order from the Hearing Officer, the respondents, on January 10, 2025, submitted the DAS safety determination letter and an Affidavit of Attorney Kimberly Zigich dated January 9, 2025, which have been marked as Respondents’ Exhibit 12 (After Filed) and Respondents’ Exhibit 13 (After Filed) respectively.

DAS legal and security staff have reviewed your letter and have considered whether reasonable grounds exist to exempt the requested records from disclosure. **Based on this review, DAS finds that the public disclosure of the records requested would pose a serious safety risk to attorney Burt Rosenberg, DESPP staff members, and the protected parties involved (i.e., the minor(s) involved and the requestor's former partner).** Such information could allow the requester to target these individuals.

Accordingly, you are directed to withhold any responsive records containing attorney Burt Rosenberg's email communications. . . . (Emphasis in original).

8. 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.

9. 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.

10. 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."

11. 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.

12. Section 1-210(b)(19), G.S., permits a public agency to withhold the following:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement

agency. Such reasonable grounds shall be determined (A) (i) the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency. . . . Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel; and
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official.

13. In addition, §1-210(d), G.S., provides:

Whenever a public agency . . . receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency, believes the requested record is exempt from

disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. . . .

14. It is found that, in addition to the information noted in paragraph 7, above, the DAS, in making their determination relied, in part, on the respondents' representations that:

the requester has a propensity to behave erratically and aggressively, is incarcerated for violating probation after harassing and threatening an attorney for the City of Stamford (among other reasons) and has sent many harassing and threatening emails to staff at DESPP. Furthermore, . . . the underlying issues stem from domestic violence incidents.

15. It is found that the DAS's determination that disclosure of the redacted portions of the respondents' March 5 disclosure may create a safety risk was not frivolous or patently unfounded and was arrived at in good faith.

16. It is further found that the DAS had reasonable grounds to believe that the disclosure of the redacted portions of the respondents' March 5 disclosure may result in a safety risk, within the meaning of §1-210(b)(19), G.S.

17. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the redacted portions of their March 5 disclosure.

18. At the second continued hearing, the respondents testified, and it is found that, when conducting their search for responsive records they requested that the DAS Bureau of Information Technology Solutions ("BITS") search the email records of the individuals referenced in the complainant's January 28 request using the keyword "Michael Ward."

19. It is found that the complainant's January 28 request was not limited to only those emails pertaining to him, but rather encompassed "every email" as described in paragraph 2, above.

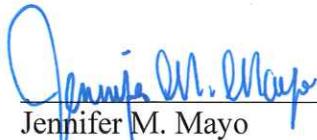
20. Considering, however, that: (i) the DAS directed the respondents "to withhold any responsive records containing attorney Burt Rosenberg's email communications. . .[.]" and (ii) the complainant's January 28 request exclusively sought email communications sent to or received by attorney Burt Rosenberg, the Commission declines to consider whether the respondents' search for records responsive to the complainant's January 28 request was sufficiently thorough under the facts and circumstances of this case.

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

1. The complaint is dismissed.

2. Although the complaint is dismissed, the Commission is concerned by the respondents' delay in requesting a safety determination from DAS. Pursuant to §1-210(d), G.S., the respondents are required to *promptly* notify DAS of their request for a safety determination letter. In this case, the respondents waited 123 days after receiving the complainant's January 28 request to seek the safety determination letter from DAS. The respondents are advised that similar delays in future cases may result in the Commission finding the respondents in violation of the promptness provision of §1-210(d), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 22, 2025.



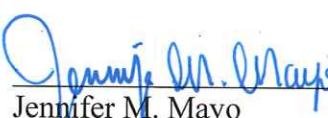
Jennifer M. Mayo
Acting Clerk of the Commission

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:

MICHAEL WARD, #433227, Robinson Correctional Institution, 285 Shaker Road, PO Box 1400, Enfield, CT 06082

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Kimberly Zigich, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Jennifer M. Mayo
Acting Clerk of the Commission