

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lisa Sims,

Complainant

against

Docket #FIC 2024-0427

Office of the Corporation Counsel,
City of New Haven; City of
New Haven; John Alston, Chief,
Fire Department, City of New Haven;
and Fire Department, City of New Haven,

Respondents

June 25, 2025

The above-captioned matter was heard as a contested case on December 16, 2024 and April 23, 2025, at which times 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 March 20, 2024, the complainant requested that the respondent Office of the Corporation Counsel (the "Respondent Office") provide her with a copy of the following records:
 - a. Any emails dated December 1, 2023 [through] March 20, 2024, from John Alston to Gretchen Knauff, that mention and/or referenced Lisa Sims, Ms. Sims or Executive Assistant; and
 - b. Any emails dated December 1, 2023 [through] March 20, 2024, from John Alston to emails ending in @newhavenct.gov, that mention and/or reference Lisa Sims, Ms. Sims or Executive Assistant.

3. It is found that, by letter dated March 22, 2024, the Respondent Office acknowledged the request and forwarded it to Fire Chief John Alston for processing.¹
4. It is found that, by email dated April 23, 2024, the complainant requested a status update on the processing of the request from the Respondent Office.
5. It is found that, by email dated April 29, 2024, the complainant requested a status update on the processing of the request from the Respondent Office.
6. It is found that, by email dated May 22, 2024, the complainant requested a status update on the processing of the request from the Respondent Office.
7. It is found that, by email dated July 10, 2024, the complainant requested a status update on the processing of the request from the Respondent Office.
8. By letter dated July 23, 2024 and filed July 24, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide her with a copy of any of the requested records. Specifically, it is found that the complainant alleged that: “[o]ver the past 120 days, I have made 4 follow-up inquiries and all have gone ignored, without so much as an acknowledgment....”
9. 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.
10. Section 1-210(a), G.S., provides in relevant part that:

¹ The complainant testified that, in addition to sending her request for records directly to the Respondent Office, she also made a request for the same records through the City of New Haven’s electronic portal system. The complainant further testified that, while the request that she sent directly to the Respondent Office was acknowledged, the request that she made through the city’s portal was not. The Commission notes that the Respondent Office did not raise an issue regarding the fact that Deputy Corporation Counsel Catherine E. LaMarr, on behalf of such office, was required to forward the request to Fire Chief Alston for processing. In addition, while the Respondent Office also forwarded the instant request to Gretchen Knauff, the Director of the Department of Services for Persons with Disabilities for the City of New Haven, the complainant testified, and it is found, that the request at issue in this case is one for copies of certain emails maintained by Fire Chief Alston.

[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.

11. 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.”

12. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. It is found that, by email dated July 25, 2024, Deputy Corporation Counsel Catherine E. LaMarr on behalf of the Respondent Office informed the complainant that the Respondent Office was not the custodian of the requested records but was rather an intermediary between her and Fire Chief Alston’s office. It is further found that Deputy Corporation Counsel LaMarr informed the complainant that the Respondent Office had requested a status update from Fire Chief Alston. It is further found that, while not explicitly stated, Deputy Corporation Counsel LaMarr implied that the respondents had not yet received a status update from Fire Chief Alston.

14. It is found that, by email dated August 21, 2024, the complainant inquired with Deputy Corporation Counsel LaMarr as follows: “[i]t’s been 27 days since your first/last response (147 in total); are you still attempting to provide a reply or may I please receive [a] status on my request [so that we can] avoid proceeding with our hearing?”

15. It is found that, by email dated August 28, 2024, Deputy Corporation Counsel LaMarr informed the complainant that: “[i]n [response] to your inquiry, I have been advised that the sole records found responsive to your request are privileged and therefore exempt from disclosure under CGS §1-210(b)(10):...communications privileged by the attorney-client relationship...”

16. It is found that, by email dated August 28, 2024, the complainant replied to Deputy Corporation Counsel LaMarr, in part, as follows: “[s]o your position is that ALL the emails, regardless of who they are sent to or who they come from, are privileged?”

The First Contested Case Hearing on December 16, 2024

17. At the first contested case hearing on this matter, the complainant contended that she still had not received any responsive emails from Fire Chief Alston.

18. Regarding the email referenced in paragraph 15, above, Deputy Corporation Counsel LaMarr testified that certain records which the complainant had requested by way of a

separate request were privileged and that she did not mean to imply that the records requested in the instant matter were privileged.

19. Deputy Corporation Counsel LaMarr contended that all of Fire Chief Alston's responsive emails had been provided to the complainant on December 13, 2024. Deputy Corporation Counsel LaMarr further contended that she had firsthand knowledge concerning the provision of records because she personally reviewed Fire Chief Alston's emails and provided all responsive emails to the complainant.

20. The complainant contended that the records that she received just one business day before the first contested case hearing were not provided to her in a prompt manner. *The Commission notes that, as of December 13, 2024, 268 days had elapsed since the complainant had made her request for records in this case.*

21. The complainant indicated that she required some additional time to review the records that had been provided to her.

22. At the end of the contested case hearing, the hearing officer informed the parties, who did not object, that she was amending the case caption to add Fire Chief Alston ("Respondent Fire Chief Alston") and the Fire Department of the City of New Haven (the "respondent Fire Department") to the case as party respondents and that the parties would receive notice of a continued hearing.

23. Despite the respondents' contentions to the contrary, based on the evidence adduced during the second contested case hearing, it is found that the respondents did not provide the complainant with all of the records responsive to her request. See ¶¶ 34-35, below.

The Second Contested Case Hearing/Notice of Civil Penalty Hearing on April 23, 2025

24. On March 3, 2025, the hearing officer provided notice to Respondent Fire Chief Alston that, pursuant to §1-206(b)(2), G.S., a continued hearing would convene on April 23, 2025, at 9:30 am, at which time the Commission would consider the imposition of a civil penalty against him. The hearing officer further informed Respondent Fire Chief Alston that he would be afforded an opportunity to be heard under oath at the continued hearing.

25. Pursuant to an order from the hearing officer, Respondent Fire Chief Alston appeared at the second contested case hearing and testified on behalf of himself and the respondent Fire Department.

26. It is found that Respondent Fire Chief Alston received the complainant's request for records from the Respondent Office on March 22, 2024. Respondent Fire Chief Alston testified that he believed he had replied "received" in response to the email providing him such request.

27. It is found that, in addition to forwarding the request for records to Respondent Fire Chief Alston, the Respondent Office also forwarded the request to the city's Network Administrator.

28. It is further found that, on July 7, 2024, and in response to the complainant's *third* request for a status update, the Respondent Office emailed Respondent Fire Chief Alston to determine whether any of the requested emails had been gathered. It is found that Respondent Fire Chief Alston replied, "I do not see anyone from IT in this message thread...so I am including [IT] in [this reply] ...to ascertain the status of this request."

29. Deputy Corporation Counsel LaMarr testified about the respondents' standard practice for processing a FOI request. It is found that had the respondents followed their standard practice, upon receiving the request, Respondent Fire Chief Alston would have forwarded the request to the respondents' Network Administrator. It is further found that the Network Administrator, who would have run the searches necessary to gather the responsive emails, would have returned all responsive emails to Respondent Fire Chief Alston and/or the Assistant Fire Chief. It is further found that, upon receipt, Respondent Fire Chief Alston or the Assistant Chief would have provided such records to the complainant.

30. It is found, however, that, due to Respondent Fire Chief Alston's lack of understanding of his FOI obligations, the request in this case was not processed in accordance with the respondents' standard practice. In fact, other than responding to the July 7, 2024 email referenced in paragraph 28, above, Respondent Fire Chief Alston took no action to ensure the complainant's request was being processed in a timely manner (or at all). *The Commission notes that, as of July 7, 2024, the complainant's request had been pending for 122 days.*

Promptness Analysis

31. With regard to whether the respondents have acted promptly in complying with 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.

32. It is found that Respondent Fire Chief Alston received the complainant's request on March 22, 2024, but took no action with regard to the request, and that had the complainant not appealed to the Commission, it is very likely that she would not have received any of the emails she requested.

33. In this regard, it is further found that Deputy Corporation Counsel LaMarr became involved with the processing of the request only after the complainant filed her complaint with the Commission and after a contested case hearing was scheduled on this matter, at which time she reached out to the Network Administrator and obtained *some* of the requested emails in order to provide them to the complainant. It is further found that Deputy Corporation Counsel LaMarr's efforts in this regard took place in mid-December 2024—nearly nine months after the complainant made her request for records in this case.

34. At the time of the second hearing on this matter, it is found that the respondents had provided the complainant with all of the emails responsive to the request set forth in paragraph 2.a, above, as well as some of the emails responsive to the request set forth in paragraph 2.b, above. Specifically, it is found that the respondents decided not to run the search term "Executive Assistant" contained in the request set forth in paragraph 2.b, above, because, by the time the respondents turned their attention to this request, it had been pending for nearly nine months, and they believed that including such search term would have produced too many potentially responsive emails.

35. It is found that the respondents did not promptly provide the complainant with the emails responsive to the requests set forth in paragraphs 2.a, and 2.b, above. It is further found that the respondents failed to provide the complainant with all of the emails responsive to the request set forth in paragraph 2.b, above.

36. It is therefore concluded that the respondents violated both the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Consideration of the Imposition of a Civil Penalty

37. As noted in paragraph 24, above, on March 3, 2025, the Commission informed Respondent Fire Chief Alston that it would consider the imposition of a civil penalty against him.

38. Section 1-206(b)(2), G.S., provides, in relevant part, that:

upon a 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 the 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 five thousand dollars.²

² The Commission notes that, pursuant to Public Act 23-200, §1-206(b)(2), G.S., was amended to increase the maximum civil penalty authorized under the FOI Act from \$1,000 to \$5,000.

39. It is found that the fact that Respondent Fire Chief Alston received the complainant's request on March 22, 2024, and failed to take any affirmative steps to ensure that the request was being processed was not reasonable.

40. It is further found that the fact that Respondent Fire Chief Alston received a request for a status update 107 days subsequent to his original receipt of the request and failed to take any affirmative action to ensure that the request was being processed (other than copying the Network Administrator on an email) is not reasonable.

41. It is therefore concluded that the complainant's right to prompt access to non-exempt responsive public records was denied by the respondents "without reasonable grounds," within the meaning of §1-206(b)(2), G.S., and a civil penalty is warranted.

42. It is found that Respondent Fire Chief Alston is the official directly responsible for the violations set forth in paragraph 36, above.

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

1. Within forty-five (45) days of the date of the Notice of Final Decision, the respondents shall complete the search necessary to gather the outstanding emails responsive to the request set forth in paragraph 2.b, of the findings above, by running the search term "Executive Assistant," and shall provide all responsive emails to the complainant, free of charge.

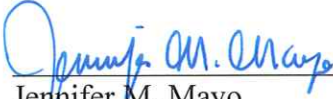
2. In complying with paragraph 1 of the Order, above, the respondents may redact only those portions of responsive emails that are mandatorily exempt from disclosure. No redactions may be made to those portions of the responsive emails that are permissively exempt from disclosure.

3. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's Public Education Officer to schedule a training session regarding the requirements of the FOI Act.

4. Respondent Fire Chief Alston shall remit to the Commission, within forty-five (45) days of the Notice of Final Decision in this matter, a civil penalty in the amount of two hundred and fifty dollars (\$250.00).

5. Henceforth, the respondents shall strictly comply with the promptness and disclosure 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 June 25, 2025.

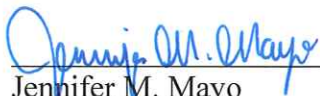

Jennifer M. Mayo
Acting Clerk of the Commission

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:

LISA SIMS, 38 Building Brook Road, Hamden, CT 06514

OFFICE OF THE CORPORATION COUNSEL, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine E. LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Jennifer M. Mayo
Acting Clerk of the Commission