



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Ellen Andrews,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-791

Director, State of Connecticut, Office of the Healthcare
Advocate; and State of Connecticut, Office of the
Healthcare Advocate,
Respondent(s)

August 18, 2015


Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, September 9, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE August 28, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 28, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE August 28, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Ellen Andrews
Matthew Budzik, Esq.

2015-08-18/FIC# 2014-791/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Ellen Andrews,

Complainant

against

Docket #FIC 2014-791

Director, State of Connecticut,
Office of the Healthcare Advocate;
and State of Connecticut,
Office of the Healthcare Advocate,

Respondents

August 18, 2015

The above-captioned matter was heard as a contested case on August 6, 2015, 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 letter dated August 20, 2014, the complainant requested that the respondents provide her with copies of the following records:
 - a. SIM¹ Consumer Advisory Board member voting and drafting regarding the Board's support letter for the state's SIM Model Test Grant Application;
 - b. SIM Consumer Advisory Board recommendations for appointments to any SIM committees; and
 - c. Budget for SIM Consumer Advisory Board activities.²

¹ The State Innovation Model or "SIM" is a federal initiative, providing financial support to states for the development and testing of state-led, multi-payer health care payment, and service delivery models that will, among other things, improve health care system performance and implement payment reform.

3. It is found that, by electronic letter dated October 7, 2014, the respondents acknowledged the complainant's request, and enclosed a PDF attachment containing responsive records. It is further found that the respondents informed the complainant that "[d]raft documents that are referenced in the e-mails (e.g., budget narrative), but are not included in the attached PDF are accessible at our website."

4. By letter dated and filed November 4, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by denying her a copy of the requested records. In addition, the complainant raised an issue with an executive session conducted by the respondents on March 19, 2014. Specifically, the complainant contended that she believed that she was discussed in such session but was not notified prior to the session. The complainant also alleged that other individuals were discussed during such session and were also not notified in advance. With regard to such session, the complainant stated the following: "I understand that the meeting is over and it is not possible to remedy the past error, but an opinion would be instructive for future meetings."

5. Section 1-200(5), G.S., provides:

"Public 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, printed, photostated, photographed or recorded by any other method.

6. Section 1-210(a), G.S., provides in relevant part that:

Except 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212

7. 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

² The Commission notes that the complainant clarified that her request should be understood as seeking "all material, in whatever form, whether on computer or in writing, including, but not limited to, e-mail and other written correspondence."

any public record.”

8. It is concluded that, to the extent that the respondents maintain the requested records, such records are public records within the meaning of §1-200(5), G.S., §1-210(a), G.S., and §1-212(a), G.S.

9. At the start of the contested case hearing, the complainant testified that the only request that she believed remained outstanding was her request for records concerning the SIM Consumer Advisory Board recommendations for appointments to any SIM committees (the “Second Request”). See ¶ 2.b, above. With regard to the Second Request, the complainant contends that the respondents should have more responsive records, particularly records concerning the respondents’ voting records or ballots on certain individuals’ appointments to various SIM subcommittees.

10. It is found that the complainant received some records from the respondents that were responsive to the Second Request.

11. It is found that the respondents conducted a thorough search for records responsive to the Second Request, including searching their hardcopy records and files, as well as their electronic records. With regard to the electronic records, it is found that the respondents conducted several “key word” searches, so as to gather all responsive records. It is further found that the respondents did not redact or withhold any responsive record.

12. With regard to the records request, it is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

13. With regard to the allegations concerning executive sessions, §1-200(6), G.S., provides, in relevant part, as follows:

“Executive sessions,” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: . . . (A) Discussion concerning the appointment, employment, performance, health or dismissal of a public officer or employee, provided that such individual may require that the discussion be held at an open meeting. . . .

14. Section 1-206, G.S., provides, in relevant part, as follows:

(b)(1) Any person denied the right to inspect or copy records . . . or wrongfully denied the right to attend any meeting of a public agency . . . may appeal therefrom to the Freedom of Information 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, except in the case of an unnoticed or secret meeting, in which case the appeal shall be filed not later than thirty days after the person filing the appeal receives

notice in fact that such meeting was held. . . .

15. At the contested case hearing, the complainant contended generally that the respondents had a practice of discussing individuals who are under consideration for appointment to SIM subcommittees in executive session and of not providing such individuals with an opportunity to request that such discussions be conducted as part of an open, public meeting. However, in this regard, the complainant did not provide specific allegations, such as the dates and the times when such discussions allegedly occurred, or the names of individuals who were allegedly denied the right to request that certain discussions be conducted in public.

16. With regard to such general allegations, it is found that the Commission does not have sufficient facts to determine what happened and when it happened, so as to determine further that it has jurisdiction over such events. Moreover, such general allegations were not fairly raised in the complaint. Accordingly, the Commission will not further address such allegations.

17. The complainant also contended during the contested case hearing that the respondents failed to give her notice that they intended to discuss consideration of her appointment to one of the SIM subcommittees in a March or April 2014 executive session³, and failed to give her an opportunity to request that such discussion be conducted as part of an open meeting.

18. The complainant did not contend that the respondents' consideration of her appointment to a SIM subcommittee occurred during an executive session that was part of a secret meeting. In fact, the complainant testified that her appointment to one of the SIM subcommittees—specifically, her appointment to the Equity and Access Council--was confirmed during the open meeting which followed the executive session discussion.

19. It is found that the complainant had notice in fact of the executive session discussion concerning her appointment when such discussion occurred, whether such session was in March or April, 2014.

20. Therefore, the complainant had thirty days from such session to file an appeal with this Commission, in accordance with the provisions of §1-206(b)(2), G.S.

21. Because it is found that the complainant did not file an appeal until November 4, 2014, it is concluded that the Commission does not have subject matter jurisdiction over this matter.

22. Finally, the complainant contended during the contested case hearing that the respondents conducted an executive session on March 19, 2014 to consider the appointment of other individuals to certain SIM subcommittees, but failed to provide the subjects of the


³ The Commission notes that, while the complaint alleged that the respondents discussed the complainant in a March 19, 2014 executive session, at the contested case hearing, the complainant contended that the respondents discussed her as part of a "March or April" 2014 executive session.

discussion the opportunity to request that the discussion (or discussions) occur as part of the open meeting.⁴

23. With regard to the allegation concerning the respondents' failure to provide notice to other individuals about executive session discussions, the Commission notes that such allegation is similarly time-barred. Moreover, the right to prior notification and the right to request that an executive session discussion pursuant to §1-200(6)(A), G.S., be conducted as part of an open meeting is the right of the individual who is slated for discussion during the executive session. The complainant does not have a right to file a complaint alleging a violation of other individuals' rights under the FOI Act.

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

1. The complaint is dismissed.


Valicia Dee Harmon
as Hearing Officer

FIC2014-791HOR/vdh/08/18/2015

⁴ The Commission notes that, since the filing of the complaint, the respondents have met with the Commission's Public Education Officer on two occasions to receive FOI training. The respondents are now aware of the FOI Act requirement to notify individuals to be discussed prior to executive session, pursuant to §1-200(6)(A), G.S., and have agreed to comply with the FOI Act in this regard going forward.