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# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-350

Freedom of Information Officer, State of Connecticut,  
University of Connecticut Health Center; and State of  
Connecticut, University of Connecticut Health Center,  
Respondent(s)

April 4, 2016

### 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, April 27, 2016**. 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 April 15, 2016**. 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 April 15, 2016**. **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 April 15, 2016**, 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: Michael Aronow  
Assistant Attorney General Lynn Wittenbrink

2016-04-04/FIC# 2015-350/Trans/wrbp/VRP//TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Aronow,

Complainant

against

Docket #FIC 2015-350

Freedom of Information Officer,  
State of Connecticut, University of  
Connecticut Health Center; and  
State of Connecticut, University of  
Connecticut Health Center,

Respondents

April 1, 2016

The above-captioned matter was heard as a contested case on October 19, 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. By letter of complaint filed May 20, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for certain public records.
3. It is found that the complainant made a May 12, 2015 request for documents, including emails, created, received or sent by Dr. Thomas Yasuda and Dr. David McFadden at the respondent Health Center that mentioned the complainant or, in the case of Dr. Yasuda, also mentioned Dr. Thomas DeBerardino, within specified time periods.
4. It is found that the complainant's May 12, 2015 request repeated a request he had made thirteen months earlier, on April 7, 2014. That 2014 request had resulted in a complaint to, and final decision by, the Commission in Docket #FIC2014-219, Aronow v. UConn Health Center ("Aronow I"). The Commission takes administrative notice of its records and files in Aronow I. The complaint in that case was ultimately withdrawn after negotiations between the parties resulted in an agreement that the documents would be

provided by approximately May 1, 2015, and an agreement as to the “search protocol” that would be followed when Dr. Aronow requested email records from the respondents.

5. It is found that the respondents compiled and reviewed most of the records responsive to the April 7, 2014 request no later than February 2015, around the time of the decision in Aronow I.

6. It is found that the agreed-upon “search protocol” involved such common-sense procedures as: searching all the folders in an email account (including archived and deleted folders); and searching the hard drive of the computer of the individual whose emails were being searched, using the so-called “start” button at the bottom-left corner of the display screen (on a computer running Windows).

7. It is found that the respondents, although they had already compiled most of the requested emails for Aronow I, conducted a new search of Dr. Yasauda’s emails pursuant to the “search protocol.”

8. It is found that the respondents did not provide any already located emails while they were conducting their new search, and that no requested records were provided to the complainant until June 26, 2015.

9. It is found that seven pages of responsive records were withheld from the records provided on June 26, 2015, on the grounds that they were exempt from disclosure as records of strategy and negotiation with respect to pending litigation, and communications privileged by the attorney-client relationship. Those records were submitted to the Commission for an in camera inspection, and were Batc stamped by the respondents as pages 001 through 007.

10. It is found that the records provided on June 26, 2015, together with the seven pages that were withheld, constitute all the records that are responsive to the complainant’s request.

11. 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.

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

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.

13. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

14. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

15. Three issues are presented: first, whether the withheld records are exempt from disclosure; second, whether the respondents conducted a diligent search for the requested records; and third, whether the records were provided promptly.

16. With respect to exemptions, §1-210(b)(4), G.S., provides that disclosure is not required of:

Records pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been finally adjudicated or otherwise settled

17. Section §1-200(8) defines “pending claims” to mean:

a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.

18. Section 1-200(9) defines “pending litigation” to mean:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to a court which seeks to enforce or implement legal relief or a legal right; or (C) the agency's consideration of action to enforce or implement legal relief or a legal right.

19. It is found that pages 001, 002, 003, 004 and 005 of the in camera records pertain to the negotiation of the complainant's working conditions at the respondent Health Center to resolve the pending litigation between the parties.

20. It is concluded that pages 001 through 005 of the in camera records pertain to negotiations with respect to pending litigation within the meaning of §1-210(b)(4), G.S.

21. It is found that pages 006 and 007 of the in camera records pertain to strategy with respect to the hearing on this FOI complaint.

22. It is concluded that pages 006 and 007 of the in camera records pertain to strategy with respect to a pending claim within the meaning of §1-210(b)(4), G.S.

23. It is therefore concluded that the respondents did not violate §1-210(a), G.S., by withholding the seven pages of records from the complainant.

24. In light of the conclusion reached in paragraph 22, above, it is unnecessary to address any remaining claims of exemption.

25. With respect to the completeness of the search, the complainant maintains that he had no input concerning the search protocol followed, and that the search protocol may have missed some emails

26. It is found, however, that the respondents conducted a diligent search for the requested records, and followed the search protocol that had been negotiated between the parties.

27. It is therefore concluded that the respondents did not violate the FOI Act by failing to conduct a diligent search for the requested records.

28. With respect to the promptness of the provision of records, the respondent Freedom of Information Officer maintains that he had every intention of providing the records within the 60 days he promised on February 24, 2015 (rather than the 120 that ultimately elapsed from the date of the settlement of Aronow I), but that he had other pending FOI requests to process, including other requests by the complainant; that his administrative assistant left her position in February and for two months he had no administrative assistant; and that he had a serious and prolonged major medical issue with a close family member.


29. The Commission accepts at face value the competing demands on the Freedom of Information Officer's time. Nonetheless, most of the requested records had already been compiled at the time of the request in this matter (in response to the earlier, nearly identical request). Moreover, the Freedom of Information Officer was aware that his administrative assistant was leaving three weeks before he agreed to provide the records in 60 days on February 24, 2015. Finally, no records whatsoever were provided until about six weeks after the May 12, 2015 request, although many of the records had

been compiled as early as February 24, 2015, and the complainant had requested that they be provided on a rolling basis.

30. Taking into consideration all the facts and circumstances of this case, it is concluded that the records were not provided promptly, and that the respondents consequently violated the promptness provision of §1-212(a), G.S.

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 provision of §1-212(a), G.S.



Victor R. Perpetua  
as Hearing Officer