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FREEDOM OF INFORMATION



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John Cupka,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-631

Commissioner, State of Connecticut, Department of
Correction; and State of Connecticut, Department of
Correction,

Respondent(s)

April 26, 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, May 25, 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 May 13, 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 May 13, 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 May 13, 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: John Cupka
Attorney James Neil
cc: Craig Washington

2016-04-26/FIC# 2015-631/Trans/wrbp/TCB//VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

John Cupka,

Complainant

against

Docket #FIC 2015-631

Commissioner, State of Connecticut,
Department of Correction; and State
of Connecticut, Department of Correction,

Respondents

March 30, 2016

The above-captioned matter was heard as a contested case on December 7, and December 22, 2015, 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 letter dated September 9, 2015, the complainant made a request to the respondents for copies of certain identified records which included audio recordings of interviews conducted as part of several investigations conducted by the respondent department's Security Division and Affirmative Action Division.
3. It is found that the respondents acknowledged receipt of the complainant's request on September 10, 2015.
4. By letter dated and filed on September 22, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records request.
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 any public record.”

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

9. It is found that on October 19, 2015, the respondents made available some of the records responsive to the complainant’s request, but those records did not include the copies of the audio recordings that were requested.

10. It is found that by the December 22, 2015 hearing in this matter, the respondents had provided the complainant with all records responsive to his request *except* for copies of the requested audio recordings maintained by the respondent department’s Affirmative Action division.

11. At the hearing on this matter, the respondents contended that while the audio recordings maintained by the respondent department’s Affirmative Action Division had not yet been provided, they were forthcoming, and explained that the failure to comply with this portion of his request was a result of the Division having a heavy workload with limited staff.

12. It is concluded that the respondents violated the disclosure provisions of the FOI Act by failing to provide the complainant with a copy of the audio recordings described in paragraphs 2, above.

13. At the hearing on this matter, the complainant contended that while many of the records were provided, the respondents did not provide those records promptly as required by the statute. The complainant further contended that the respondents' failure to provide the requested audio recordings was inexcusable given the fact that he had been requesting those records for several months through his attorney.

14. The 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 record; 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.

15. Through their counsel, the respondents contended at the hearing on this matter that their response was prompt under the circumstances claiming that because the records were maintained by several different divisions of the respondent department, each with their own workloads and limited staff, the five weeks it took for them to compile the paper records responsive to the complainant's request was reasonable. The respondents claimed that likewise the delay in providing the requested audio recordings maintained by the respondent department's Security Division until December 22, 2015 was reasonable.

16. However, it is found that the complainant had been requesting access to the requested records for several months through his attorney pursuant to his due process rights under Loudermill.¹ It is found that copies of the paper records that were provided to the complainant were copies of the same records that had already been provided to the complainant as a result of those requests and therefore, were already compiled and readily available.

17. It is found that, prior to drafting his September 9, 2015 letter of request, the complainant was led to believe by a staff member of the respondent department that he had to specifically state that he was making his records request under the FOI Act before he could be provided access to the records.

18. It is also found that respondents were aware of the time by which the complainant needed the information contained in the records and the importance of the records to the complainant.

19. Finally, it is found that, while there were some generalized statements from counsel that the respondent department is overloaded with work and under-staffed, there is no evidence in the record regarding any of these claims, or regarding the importance to


¹*Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 546 (1985).

the public of the respondent department completing its other business without the loss of the personnel time involved in complying with the request.

20. Consequently, it is concluded, based upon the facts and circumstances of this case, that the respondents failed to promptly comply with the complainant's request as required by §1-210(a) and 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. The respondents shall provide the complainant with a copy of the audio recordings described in paragraphs 2, 10 and 11, of the findings, above.
2. Henceforth, the respondents shall strictly comply with the disclosure and the promptness provisions of §§1-210(a) and 1-212(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer