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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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Juan Maldonado,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-030

Commissioner, State of Connecticut,
Department of Correction; and State of
Connecticut, Department of Correction,
Respondent(s)

September 24, 2014

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, October 8, 2014**. 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 September 30, 2014**. 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 September 30, 2014**. **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 **fourteen (14) copies** be filed **ON OR BEFORE September 30, 2014**, 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: Juan Maldonado
James Neil, Esq.
cc: Kristine Barone

2014-09-24/FIC# 2014-030/Trans/wrbp/LFS/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Juan Maldonado,

Complainant

against

Docket #FIC 2014-030

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

Respondents

September 12, 2014

The above-captioned matter was heard as a contested case on July 31, 2014, at which time 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 et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 December 16, 2013, the complainant requested copies of all emails sent or received in 2013 concerning “[the complainant] and his incomplete sentence calculation.” The complainant referenced the emails of eight staff members (Mortimer, Manley, Baker, DiGennero, Vazquez, DeVeau, Barrone, and Dezurenda), but stated that his request was not limited to those people.
3. By letter of complaint filed January 15, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the records he requested.
4. Section 1-200(5), G.S., defines “public records” as follows:

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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

6. 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."

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

8. It is found that in January 2014, the respondents' FOI liaison made an inquiry to at least one of the named staff, and received back a letter and three pages of e-mails from one staff member.

9. It is found that on June 4, 2014, the liaison sent the complainant's request to five of the eight named staff members and asked them to search for e-mails. (It is found that the liaison did not send the request to the acting commissioner or to the two staff members who had since retired.)

10. It is found that staff member Mortimer replied four minutes later that he did not have any responsive e-mails. It is found that staff member Barone replied eleven minutes later that she did not have any responsive e-mails. It is found that staff member Vazquez replied 35 minutes later that she had nothing other than what was provided in January. It is found that staff member DiGennaro replied two days later that she searched and did not have any responsive e-mails.

11. It is found that at some point after the retirement of staff members Baker and Manley the respondents switched to Microsoft Outlook. It is found that Baker's and Manley's e-mails are now stored off-site in a database. It is found that the respondents charge a fee to retrieve any e-mails in such off-site database, and that requests are backed up until December 2014. It is found that the respondents did not search this database.

12. The complainant is dissatisfied with the respondents' search because, he testified, he saw Mortimer and Manley send e-mails to DiGennaro in the spring of 2013 concerning his sentence calculation.

13. It is found that the respondents failed to prove that they performed a diligent and thorough search for all of the records requested by the complainant.

14. It is concluded that the respondents violated §§ 1-210(a) and 1-212(a), G.S., by failing to prove that no other records exist that are responsive to the complainant's request.

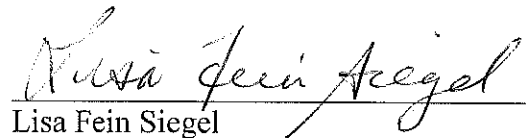
The following order by the commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall within four weeks of the date of this Decision perform a diligent and thorough search of the off-site database of e-mails for records responsive to the complainant's request and provide any records retrieved to the complainant free of charge.

2. The respondents shall within four weeks of the date of this Decision perform a diligent and thorough search of the e-mails of the named staff members, including determining that the search encompasses all the e-mails for 2013 and all the staff members' electronic e-mail files.

3. The respondents shall send a letter to the complainant informing him of the results of their search and providing any additional records free of charge.

4. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.



Lisa Fein Siegel
as Hearing Officer