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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 2013-744

Executive Director, State of Connecticut,  
University of Connecticut Health Center; and  
State of Connecticut, University of Connecticut  
Health Center,

Respondent(s)

October 2, 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 22, 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 October 14, 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 October 14, 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 October 14, 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

Wendy Paradis  
Acting Clerk of the Commission

Notice to: Michael Aronow  
Stephen J. Courtney, Esq.

2014-10-02/FIC# 2013-744/Trans/wrbp/MS/PSP/GFD

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Aronow,

Complainant

Docket # FIC 2013-744

against

Executive Director, State of Connecticut,  
University of Connecticut Health Center; and  
State of Connecticut, University of Connecticut  
Health Center,

Respondents

October 2, 2014

The above-captioned matter was heard as a contested case on August 28, 2014, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

Subsequent to the hearing, on September 15, 2014, the hearing officer ordered the complainant to submit additional documents. Pursuant to such order, the complainant filed an after-filed exhibit, which has been marked as follows:

Complainant's Exhibit F: Email Exchanges (multi-page document)  
(1<sup>st</sup> page is a cover letter to FOIC)

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 October 15, 2013, the complainant made a request to Scott L. Wetstone, M.D., the respondents' Freedom of Information Officer, for the following records:

[a] Any records between January 1, 2006 and October 16, 2013  
with respect to payment for legal services by or on behalf of Dr.  
Jay R. Lieberman from any of Dr. Lieberman's UCHC  
academic accounts or otherwise by the State of Connecticut, the

University of Connecticut, the University of Connecticut Health Center, or the University of Connecticut School of Medicine.

- a. This request would include but not be limited to the amount paid, the date paid, the party paid, and the nature of the services provided.
- b. This request would include but not be limited to the records for Dr. Lieberman's Academic Enrichment Fund, Dr. Lieberman's School of Medicine Fund, and any other discretionary accounts maintained by the Department of Orthopaedic Surgery or the University of Connecticut School of Medicine.
- c. This request would also include all payments to Jeffrey J. Mirman, Esq. or to the legal firm Hinckley, Allen & Snyder, LLP during this time period.

[b] Any records with respect to the occurrence of oral conversations; written correspondence including but not exclusive to email, fax, or letter; or face to face meetings between Dr. Lieberman's attorney Jeffrey J. Mirman and/or representatives of the legal firm Hinckley, Allen & Snyder, LLP, and attorney's [sic] working for or on behalf of UCHC including Assistant Attorney General William Kleinman, Dean Frank Torti, Acting Dean Bruce Liang, and Dr. Phil Austin between September 1, 2011 and October 16, 2013.

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[c] A list of all documents that you have obtained related to the above requests but were excluded and the reason they were excluded.

3. It is found that, by email dated October 16, 2013, Dr. Wetstone acknowledged, on behalf of the respondents, the complainant's October 15<sup>th</sup> request, described in paragraph 2, above.

4. It is found that, by email dated November 18, 2013, the complainant contacted Dr. Wetstone inquiring as to the status of his October 15<sup>th</sup> request.

5. By email received and filed on December 3, 2013, the complainant appealed to this Commission, alleging that the respondents failed to provide access to the records, described in paragraph 2, above, in violation of the FOI Act. In his post-hearing brief, the complainant also requested the imposition of civil penalties against the respondents.

6. Section 1-200(5), G.S., defines “public records or files” as:

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.

7. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

9. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that, by email dated January 6, 2014, Dr. Wetstone informed the complainant that he had concluded his search for records and that the respondents did not maintain any documents that were responsive to the request. Dr. Wetstone also informed the complainant that any documents held in the Attorney General’s Office were outside the jurisdiction of his office since the Attorney General’s Office was a separate state agency.

11. At the hearing, the complainant argued that there was a lack of due diligence on the part of the respondents to respond to his records request. He insisted that there were records responsive to his request that the respondents should have located and provided to the complainant.

12. Dr. Wetstone contended that the steps he took to respond to the complainant’s request were prudent and diligent. He testified that he contacted (verbally or via email) the following individuals and inquired as to whether they had any records that were responsive to the complainant’s request: Kristi Gafford, on behalf of Dean Frank Torti, M.D., Dr. Phil Austin, Dr. Bruce Liang and Assistant Attorney General William Kleinman. Dr. Wetstone testified that, in the past, he has found these individuals to be credible and reliable. He testified that Dr. Torti, Dr. Austin and Dr. Liang informed him that they had no records that were responsive to the complainant’s request. Dr. Wetstone also testified that Attorney Kleinman informed him that if he had any records responsive to the complainant’s request, such records were in the custody of

the Attorney General's Office, and not with the University of Connecticut Health Center. At the hearing, Dr. Wetstone was shown certain documents by the complainant that Dr. Wetstone had not seen prior to the hearing in this matter. Dr. Wetstone acknowledged that such records, on their face, appeared to contradict what he had been told by Attorney Kleinman. Dr. Wetstone then extended an offer to the complainant to conduct an additional search for responsive records.

13. It is found that the respondents failed to present any evidence regarding the details of their search from which it could be found that such search was thorough and diligent. It is found therefore, that the respondents failed to demonstrate that they conducted a thorough and diligent search for records responsive to the complainant's October 15<sup>th</sup> request. It is concluded, therefore, that the respondents violated the FOI Act.

14. The Commission declines to impose a civil penalty against the respondents.

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

1. The respondents shall forthwith undertake a diligent search for the requested records, and provide any located records to the complainant, free of charge. If the respondents do not locate any records responsive to the complainant's request, they shall provide the complainant with an affidavit detailing the scope and results of the search.

  
Commissioner Matthew Streeter  
as Hearing Officer