

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Frank Freeman,

Complainant

against

Docket #FIC 2016-0793

Chairman, State of Connecticut,
Commission on Human Rights and
Opportunities; and State of Connecticut,
Commission on Human Rights and
Opportunities,

Respondents

October 11, 2017

The above-captioned matter was heard as a contested case on March 6, 2017, 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 October 13, 2016, the complainant requested that the respondents provide him with copies of the following records:
 - a. Any and all emails or records of correspondence either internal or external from the CHRO Affirmative Action Designee Marla Shiller to any and all staff of the CHRO from the period of January 1, 2015 thru October 13, 2016;
 - b. Any and all emails to or from Attorney Charles Krich and the above mentioned Marla Shiller, from the period of January 1, 2015 thru October 13, 2016;
 - c. Any and all emails to or from Attorney Michele Dumas Keuler and the above mentioned Marla Shiller specifically from the period of January 1, 2015 thru October 13, 2016;
 - d. Any and all emails to or from Executive Director Tanya Hughes and the above mentioned Marla Shiller

- specifically from the period of January 1, 2015 thru October 13, 2016;
- e. Any and all emails to or from Deputy Director Cheryl Sharp and the above mentioned Marla Shiller specifically from the period of January 1, 2015 thru October 13, 2016;
 - f. Records of any trainings, seminars or presentations presented to the CHRO by the above mentioned Marla Shiller from the date of her employment with the CHRO to October 13, 2016;
 - g. The names of attendees of the above mentioned presentations or seminars and the names of the people trained by Marla Shiller from the period in time in which she began her employment with the CHRO and while she served a functioning role for the CHRO thru October 13, 2016 if available;
 - h. The job titles previously held by the above mentioned Marla Shiller and all the job titles or positions in which she still serves a functioning capacity at the CHRO;
 - i. The title or titles for which the above mentioned Marla Shiller currently serves a functioning role for the CHRO;¹
 - j. The names of all supervisors of the above person Marla Shiller during the course of her employment with the CHRO; and
 - k. The dates of any and all committee meetings, public meetings, public hearings or public forums of any nature that the above mentioned Marla Shiller has participated in as an employee or a representative of the CHRO.

3. It is found that, by email dated October 25, 2016, the respondents acknowledged the request, and informed the complainant that they would contact him once they had made a determination with regard to the requested records.

4. By letter dated and filed November 8, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with a copy of the records described in paragraph 2, above. At the hearing, the complainant requested that the Commission impose the maximum civil penalty against the respondents.

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

¹ The Commission notes that the request in paragraph 2.i, above, is a subset of the request in paragraph 2.h, above.

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, at the time of the instant request, the complainant was employed by the Connecticut Department of Labor (“DOL”).

10. It is found that Ms. Shiller is employed by the DOL as the department’s Equal Employment Opportunity Manager. It is further found that, as part of her duties with the DOL, Ms. Shiller performs affirmative action duties for the Connecticut Commission on Human Rights and Opportunities (“CHRO”).

11. The respondents’ Paralegal Specialist Charles Perry testified at the contested case hearing. It is found that, in addition to many other job duties, Mr. Perry is the point person with regard to FOI requests.

12. With regard to the request described in paragraph 2, above, it is found that, by email dated October 20, 2016, Mr. Perry forwarded the request to every employee at the CHRO who he believed might have responsive records. It is further found that counsel for the respondents spoke directly to Executive Director Tanya Hughes and Deputy Director Cheryl A. Sharp and asked them to search specifically for records responsive to the request in paragraphs 2.f through 2.k, above. It is found that various CHRO employees gathered records and forwarded them to Mr. Perry.

13. It is found that, by invoice dated November 16, 2016, Mr. Perry informed the complainant that 219 pages of responsive records were ready for him and that the cost for

the copies would be \$54.75.

14. It is found that, by check dated November 18, 2016, the complainant paid the respondents for the copies.

15. It is found that, upon receipt of the complainant's check, Mr. Perry mailed the complainant the responsive records referred to in paragraph 13, above. (The "first installment").

16. In addition, it is found that, by email dated October 28, 2016, Mr. Perry forwarded the request to Marla Shiller.

17. In response to the request for emails set forth in paragraphs 2.a through 2.e, above, it is found that Ms. Shiller prepared an affidavit in which she averred that she was providing the complainant with all emails that she either sent to or received from CHRO employees Deputy Director Hughes, Deputy Director Sharp, Attorney Charles Krich, and Attorney Michelle Dumas Keuler, from the time period January 1, 2015 through October 13, 2016. It is further found that Ms. Shiller averred that, other than employee medical records and requests for reasonable accommodations under the Americans with Disabilities Act ("ADA"), she had no additional responsive emails in her possession.

18. It is found that Ms. Shiller's affidavit along with the responsive emails was provided to the respondents on or about January 12, 2017.

19. It is further found that, under cover letter dated February 1, 2017, Mr. Perry emailed Ms. Shiller's affidavit and 105 additional pages of responsive records to the complainant. It is found the respondents did not charge the complainant the per page fee for these records. (The "second installment").

20. At the contested case hearing, the complainant conceded that the first installment of records was provided to him promptly, however he contended that the second installment of records was not promptly provided to him. He further contended that the respondents should have additional responsive records.

21. In response, the respondents contended that they conducted a thorough search for responsive records and provided the complainant with all, non-exempt responsive records.

22. The respondents testified, and it is found, that all electronic records in their possession which were not double deleted (meaning, deleted and then deleted again from the deleted items folder) were searched for responsive records. It is found that any electronic record that was double deleted would now have to be obtained through the Connecticut Department of Administrative Services Bureau of Enterprise Systems and Technology. It is further found that the respondents also searched their hardcopy records for records responsive to the complainant's request.

23. It is further found, that while the complainant believes there should be more responsive records in the respondents' possession, such as Ms. Shiller's employment

records, (see ¶¶2.g-2.k, above), the request for records in this case was directed to the CHRO, and Ms. Shiller is employed by the DOL.

24. It is found that the respondents conducted a thorough search for responsive records in this case.

25. With regard to promptness, 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 statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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.

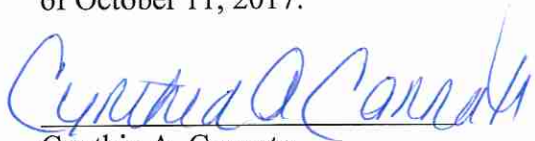
26. Based on the facts and circumstances, including the fact that Mr. Perry decided to have Ms. Shiller conduct the search for responsive emails (so that the complainant did not end up receiving multiple copies of the same email), and then had to wait for Ms. Shiller to provide these records to him, and the fact that between the time when Ms. Shiller provided her responsive emails to the respondents and Mr. Perry forwarded such records to the complainant, see ¶¶18-19, above, Mr. Perry was called out of state to deal with an unexpected, tragic family matter, it is found that the respondents promptly provided the second installment of records to the complainant.

27. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

FRANK FREEMAN, 65 Benham Hill Road, West Haven, CT 06516

CHAIRMAN, STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES; AND STATE OF CONNECTICUT, COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES, c/o Attorney Kimberly Jacobsen, Commission on Human Rights and Opportunities, 450 Columbus Boulevard, Suite 2, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission