

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

John R. Williams,

Complainant

against

Docket #FIC 2017-0077

Commissioner, State of Connecticut,
Department of Public Health; and
State of Connecticut, Department of
Public Health,

Respondents

November 15, 2017

The above-captioned matter was heard as a contested case on July 14, 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 email dated December 18, 2016, the complainant requested that the respondents provide him with a copy of a tape recording of the Connecticut Board of Examiners for Opticians' regular meeting of September 22, 2015.
3. It is found that, by email dated January 11, 2017, the respondents acknowledged the request, but told the complainant that the requested tape recording no longer existed.
4. By letter dated and filed February 6, 2017, the complainant appealed to this Commission, alleging that the destruction of the requested tape recording violated the "Records Retention Act." (See §11-8, G.S., et seq.)
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. (Emphasis supplied).

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. The Commission takes administrative notice of its final decision in Ohan Karagozian v. Board of Examiners for Opticians, State of Connecticut, Department of Public Health; and State of Connecticut, Department of Public Health; Docket #FIC 2015-743 (July 13, 2016), in which it determined that the tape recording, which is being requested in the instant case, was not a public record within the meaning of §1-200(5), G.S., as it was created via a personally owned recording device.

9. The Commission also takes administrative notice of the fact that Mr. Karagozian appealed the final decision referenced in paragraph 8, above, to the superior court but that the case was dismissed for failure to serve the administrative appeal on the Commission at its offices. See Karagozian v. Freedom of Information Commission, et al., Docket No. HHB-CV-16-6034438-S (Dec. 2, 2016).

10. In this case, it is found that, at the time of complainant’s request, the requested tape recording had already been destroyed.

11. It is therefore concluded that the respondents did not violate the FOI Act as alleged in the complainant.

12. Finally, while the Commission has already determined that the requested tape recording is not a public record, the Commission observes that the retention and disposition of public records is governed by the Public Records Administrator, a separate state agency.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 15, 2017.



Cynthia A. Cannata
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:

JOHN R. WILLIAMS, c/o John R. Williams and Associates, 51 Elm Street, Suite 409, New Haven, CT 06510

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; AND STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH, c/o Assistant Attorney General Kerry Anne Colson, Office of the Attorney General, 55 Elm Street, P.O. Box 120, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission