

FREED OM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christine Cieplinski,

Complainant

Docket # FIC 2017-0625

against

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

Respondents

August 22, 2018

The above-captioned matter was heard as a contested case on January 31 and March 15, 2018, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. On his own motion, and over the objection of the respondents, the hearing officer has entered into evidence the exhibit previously marked for identification as E.

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. By letter of complaint filed October 18, 2017, the complainant appealed to the Commission, alleging that the respondents denied her request for certain public records.
3. It is found that the complainant was employed as the respondents' Director of Labor Relations beginning in 2014. Her employment was terminated by layoff, in connection with the reorganization of her department¹, by John Peeples, Vice President, Human Resources, on or about February 3, 2017.
4. It is found that the complainant made allegations of retaliatory termination to the then Senior Counsel for Health Affairs William Kleinman on February 10, 2017, and that the respondents' Office of General Counsel subsequently asked the Office of Audit, Compliance and Ethics ("OACE") to investigate the allegations. Subsequently, the complainant brought claims to

¹ The reorganization involved the elimination of two positions (including the complainant's), the transfer of 14 positions, and the addition of five positions.

the State of Connecticut Commission on Human Rights and Opportunities (“CHRO”), alleging that her layoff was in retaliation for protected conduct.

5. It is found that the complainant’s allegations of retaliatory termination revolved around the respondents’ reaction to:

- a. Her work addressing alleged misconduct of a faculty member, Dr. Srdjan Antic, and Dean Bruce Liang’s response to the complainant’s handling of that allegation of misconduct; and
- b. Her efforts to correct mismanagement and abuse of authority issues in the handling of a patient billing matter that had originated in the Patient Financial Services unit managed by Chief Clinical Revenue Officer Cassandra Mitchell and Chief Financial Officer Jeff Geoghegan. The complainant alleged that she reported those concerns to, among others, Chief Administrative Officer Carolle Andrews.

6. It is found that the complainant has obtained some records relating to her layoff, through discovery in the CHRO proceeding.

7. It is found that the complainant requested the following nine categories of additional documents from the respondent on February 27, 2017, of which the three categories described in subparagraphs 7.e , 7.f , and 7.g remain at issue:

- a. All documents, whether electronic or hard copy, relating to or reflecting the decision to hire John Peeples;
- b. All documents, whether electronic or hard copy, reflecting John Peeples’ responsibilities, including a job description, hire letter or agreement, or other written directions provided to him regarding his role, particularly with respect to the Director of Labor Relations and the Director’s reporting relationship;
- c. All documents, whether electronic or hard copy, relating to the reporting relationship between the Director of Labor Relations and the new Chief Counsel position for UConn Health. Please ensure that in compiling this response you discuss this request with Joyce Smith in Employment Services;
- d. The daily calendar for John Peeples as it relates to the reorganization of HR, including the list of invitees to any meetings or calls reflected on such calendar;
- e. “The daily calendar for [Chief Executive Officer and Executive Vice President for Health Affairs] Andrew Agwunobi as it relates to the reorganization of HR, including the list of invitees to any meetings or calls reflected on such calendar;
- f. All documents, whether electronic or hard copy, relating to meetings or discussions by representatives of UConn Health to any of the employee unions re: the elimination of the position of Director of Labor Relations; and

- g. All email and/or text communications from or to any senior leader or administrator including but not limited to communications from or to: Andrew Agwunobi, [Human Relations Vice President] John Peeples, [Chief Administrative Officer] Carolle Andrews, Ann Diamond, [Dean] Bruce Liang, CFO Jeff Geoghegan, and Cassandra Mitchell that relate to, reflect or concern the termination and/or layoff the employment of Labor Relations in January, 2017.

8. It is found that complainant made an additional request to the respondent on March 13, 2017 for:

- a. All emails and texts sent or received excluding those related to patient care or research data for the following individuals for the period of January 1, 2016 to present: Leslie Loew, Bruce Liang, Andrew Agwunobi, Jeff Geoghegan, Cassandra Michell, Lakshminarayan Santhanam, Kevin Claffey, Bruce Mayer, Srdjan Antic, and Richard Mains;
- b. All documents whether electronic or hard copy related to the procurement of services in fiscal year 2017 for auditing or related work within patient financial services;
- c. All documents whether electronic or hardcopy related to the scope of services provided by any individual and or firm in fiscal year 2017 performing auditing and related work within patient financial services regarding patient billing issues;
- d. Any and all reports or analyses prepared by any individual or firm in fiscal year 2017 performing auditing or related work with inpatient financial services regarding patient billing issues; and
- e. Any and all documents whether electronic or hard copy related to the contracting of services between UConn Health or its agents and Baker Newman and Noyes², and the performance of services by Baker Newman and Noyes for fiscal year 2017.

9. It is found that the complainant also made further requests for records on January 25, 2017 (copies of all organizational charts, job descriptions and job postings relating to the restructuring of HR); February 23, 2017 (any recorded data or information relating to the discipline of Dr. Antic; any recorded data or information relating to the discipline of Dr. Mains; any recorded data or information relating to the discipline or separation of Richard Peer; and any recorded data or information relating to the selected applicant for the Employee and Labor Relations Officer search no. 2017-263), April 24, 2017 (recorded data or information relating to the investigation commenced by Brian White in response to Christine Cieplinski's demand letter dated February 10, 2017, May 1, 2017 (OLR contracts needed to implement state layoffs); June 28, 2017 (the monthly payroll report that reflects all salaries for employees of UConn Health for the months of June and July 2017); August 14, 2017 (a copy of an FOI request filed by the Hartford Courant); August 14, 2017 (a copy of a student's response to a UConn Office of Institutional Equity finding regarding the student's allegations); August 15, 2017 (a copy of any

² Baker Newman Noyes was engaged as an outside consultant to review the patient billing matter.

and all documents relating to Cassandra Mitchell's separation/departure from UConn Health, including the circumstances leading to her separation/departure); August 25, 2017 (any information relating to the University of Connecticut Health Center's decision to outsource revenue cycle management functions, including any information relating to that decision, including information relating to any and all employees impacted by such decision, such as transfers, reassignments, layoffs, separations, and so forth); September 6, 2017 (any and all documents relating to Mr. Peeples' new reporting relationship to Storrs, including documents related to the rationale underlying this new reporting requirement; and the job specification that was used to recruit and fill a new position); December 7, 2017 (copies of any and all settlement agreements entered into by UConn with any individual in connection with the resolution of CHRO/EEOC claims in the last four months); December 15, 2017 (copies of any and all agreements entered into by UConn or its representatives with any individual(s) or entities in connection with the resolution of CHRO and/or EEOC claims in calendar year 2017; and January 16, 2018 (any and all emails exchanged between John Peeples and Andy Agwunobi on January 6, 2017 relating to the complainant).

10. It is found that the complainant requested updates on the progress of production of records responsive to her requests during the four months prior to her filing of her complaint, and was dissatisfied with the replies she received.

11. It is found that there was continuing correspondence between the parties concerning the requests for thirteen months, from January 2017 through February 2018. The respondents emailed the complainant, either by way of acknowledgment of receipt of a request, estimates of the date of production of responsive documents, or production of responsive documents, on: January 25, 2017, January 31, 2017, February 12, 2017, February 23, 2017, March 13, 2017, March 31, 2017, April 7, 2017, April 10, 2017, April 27, 2017, May 1, 2017, May 2, 2017, June 23, 2017, June 26, 2017, June 27, 2017, June 29, 2017, July 5, 2017, July 11, 2017, July 12, 2017, July 19, 2017, August 14, 2017, August 15, 2017; August 23, 2017, August 24, 2017, August 25, 2017, September 6, 2017, October 6, 2017, October 10, 2017, October 13, 2017, October 17, 2017, October 18, 2017, October 20, 2017, October 23, 2017, January 18, 2018, January 19, 2017, and February 28, 2018.

12. It is found that the respondent requested that the complainant narrow her request in order to reduce the quantity of responsive records, and that the complainant declined to do so.

13. It is found that the respondents provided approximately 2,000 records to the complainant between February, 2017 and March, 2018.

14. It is found that a number of the records provided to the complainant were redacted.

15. 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.

16. 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.

17. 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.”

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

19. With respect to the portion of the request described in paragraph 7.f, above, the respondents failed to prove that they provided all the non-exempt records.

20. It is therefore concluded that the respondents violated §1-210(a), G.S.

21. With respect to the portion of the request described in paragraph 7.g, above, it is found that the respondents have made a diligent effort to provide responsive records, and were continuing to do so as of the date of the hearings in this matter.

22. With respect to the portion of the request described in paragraph 8.a, above, which the complainant declined to narrow, it is found that there are approximately 1.85 million responsive emails that it would take one person an estimated ten years working full time to review.

23. It is therefore found that the respondents have also made a diligent effort to provide responsive records, and were continuing to do so as of the date of the hearings in this matter.

24. With respect to the portions of the request described in paragraphs 8.b, 8.c, and 8.d, above, the respondents contend that the responsive records are exempt from disclosure pursuant to §1-210(b)(10), G.S., the attorney-client privilege.

25. The applicability of the exemption contained in §1-210(b)(10), G.S., is governed by established Connecticut law defining the privilege. *Maxwell v. FOI Commission*, 260 Conn. 143 (2002). In *Maxwell*, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” *Id.* at 149.

26. Section 52-146r(2), G.S., defines “confidential communications” as:

... all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

27. The Supreme Court has also stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” *Maxwell*, supra at 149.

28. It is found that the respondents engaged the law firm of Shipman & Goodwin to provide advice with regard to patient billing practices.

29. It is found that Shipman & Goodwin, as attorneys for the respondents, engaged the accounting firm Baker Newman Noyes to analyze, or audit, relevant data in connection with billing practices at UConn Health Center.

30. It is found that Baker Newman Noyes provided their expert data analysis to Shipman & Goodwin, and that the analysis was for the purpose of enabling Shipman & Goodwin, and the Office of the Attorney General, to provide legal advice to the respondents.

31. Our Supreme Court has ruled that “[t]he attorney-client privilege can attach to reports of third parties made at the request of the attorney or the client where the purpose of the report was to put in usable form information obtained from the client.” *Olson v. Accessory Controls & Equip. Corp.*, 254 Conn. 145 (2000). Specifically, the attorney-client privilege may “attach to technical reports communicated to an attorney if done so ‘for legal opinion or interpretation.’” *Id.* at 163.

32. It is found that the documents assembled for Baker Neuman Noyes, the communications with Baker Neuman Noyes, and the report of Baker Neuman Noyes, were all part of the process of informing the attorneys in this case so that they might give appropriate advice to the respondents.

33. It is also found that the information redacted from the documents formalizing the consulting arrangement between Shipman and Goodwin and Baker Newman Noyes, which describes the specific issues sought to be analyzed by Baker Newman Noyes, cannot be disclosed without disclosing privileged communications between the respondents and their counsel.

34. It is concluded that the documents described in paragraph 32 and 33, above, are exempt from disclosure pursuant to §1-210(b)(10), G.S., and that the respondents did not violate the FOI Act by withholding them.

35. The complainant contended that communications among non-lawyers at UConn Health relating to the Baker Neuman Noyes analyses cannot be privileged because no lawyer was involved in those communications, and that therefore the respondents violated the FOI Act by redacting most of the information contained in those communications.

36. It is found, however, that the communications described in paragraph 35, above, were transmittals of privileged attorney-client communications among senior UConn Health employees who needed to know the content of the privileged advice.

37. It is concluded that the communication of privileged information among senior UConn Health staff falls within the category of "communications among corporate employees, although not directly to or from corporate counsel, [which] can be privileged if those communications are made among employees who need to know their content, i.e., who share the common interest, and are made for the purpose of seeking or receiving legal advice." *Weber v. Fujifilm Medical Systems, U.S.A., Inc.*, 2011 WL 677282 (D. Conn. Jan. 24, 2011).

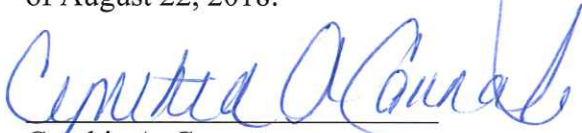
38. It is therefore concluded that the respondents did not waive the attorney-client privilege by communicating privileged information among senior employees.

39. It is concluded that the respondents did not violate the FOI Act as alleged by redacting privileged records relating to the work performed by Baker Neuman Noyes.

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

1. If they have not already done so, the respondents shall forthwith provide the complainant all records responsive to paragraphs 7.f, above.
2. The complainant and respondent shall agree on a reasonable limitation on the records encompassed by the request described in paragraph 7.g, and 8.a, above, and the respondents shall continue to provide the complainant responsive record.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 22, 2018.



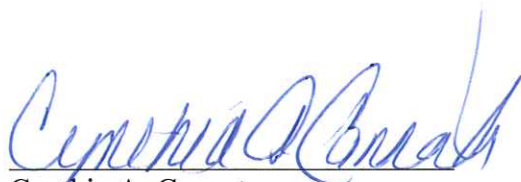
Cynthia A. Cannata
Acting Clerk of the Commission

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:

CHRISTINE CIEPLINSKI, 28 Hickory Lane, West Hartford, CT 06107

EXECUTIVE DIRECTOR, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER; AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT HEALTH CENTER, c/o Assistant Attorney General Lynn D. Wittenbrink, UCONN Health Center, 263 Farmington Avenue MC1093, Farmington, CT 06030-1093



Cynthia A. Cannata
Acting Clerk of the Commission