

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Mark Dumas and Connecticut State
Police Union,

Complainants

against

Docket #FIC 2017-0643

Dora Schriro, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State
of Connecticut, Department of Emergency
Services and Public Protection,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on March 6, 2018, at which time the complainants 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. By letter dated and filed on October 26, 2017, the complainants appealed to this Commission alleging that the respondents “statutorily denied” their September 26, 2017 request in violation of the Freedom of Information (“FOI”) Act. The complainants also requested the imposition of civil penalties against the respondents.
3. It is found that by letter dated September 26, 2017, the complainants made a request to the respondents to inspect and receive copies of the following records:
 - a. any records created or obtained since January 1, 2016 regarding or in connection with investigations, administrative inquiries, or audits into or involving Andrew Matthews or the Connecticut State Police Union, including, but not limited to, emails, text messages, hardcopy documents, audio recordings, and

video recordings (including records incorporated into records created or obtained since January 1, 2016, e.g. exhibits, etc.); and

- b. any records responsive to information requests submitted by Attorney Lorin Dafoe to Major James Canon in connection with labor grievance Union Code 17-03-0022, DPS #17-003, including, but not limited to a request submitted on August 24, 2017.

The complainants listed the email accounts of 22 individuals and stated that their request includes, but is not limited to, the emails of those individuals.

4. It is found that attached to the complainants' September 26, 2017, records request was an August 24, 2017 request, which was included in the September 26, 2017 request by reference, in which the complainants requested the following records:

- a. any records, evidence, exhibits, statements, memoranda, notes, reports, audio recordings, or video recordings regarding Grievance Union Code 17-03-0022 and the underlying facts or issues in the grievance;
- b. any and all electronic mail ("email") correspondence of any nature concerning any investigations, including, but not limited to, IA's, AI's, C-numbers, and/or M-numbers, involving the Connecticut State Police Union President, Sergeant Andrew Matthews, or Andrew Matthews from January 1, 2016 to the present;
- c. any and all electronic mail ("email") correspondence of any nature concerning any inquiries or administrative inquiries including, but not limited to, IA's, AI's, C-numbers, and/or M-numbers, involving the Connecticut State Police Union President, Sergeant Andrew Matthews, or Andrew Matthews from January 1, 2016 to the present;
- d. any records, evidence, exhibits, statements, memoranda, notes, reports, audio recordings, or video recordings of any nature concerning any inquiries or investigations, including, but not limited to, IA's, AI's, C-numbers, and/or M-numbers, involving the Connecticut State Police Union President, Sergeant Andrew Matthews, or Andrew Matthews from January 1, 2016 to the present;

- e. any records, evidence, exhibits, statements, memoranda, notes, reports audio recordings, or video recordings of any nature concerning any inquiries or investigations, including, but not limited to, IA's, AI's, C-numbers, and/or M-numbers, between any sworn state police personnel and Connecticut State Police Union employees from January 1, 2016 to the present.

The complainants listed the email accounts of several individuals and stated that their request includes, but is not limited to, the emails of those individuals.

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.

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 concluded that the requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that while there had been several conversations in which the parties discussed the order of production of responsive records, it is also found that, up until the date and time of the hearing in this manner, the respondents had not provided the complainants with any responsive records.

10. It is found that the search for records responsive to the complainants' requests generated 5000 emails. It is also found that no responsive emails were found for Lesley Donahue, John Jacobi, David Noble, and Patrick Sweeney (four of the twenty-two individuals named in the complainants' request).

11. It is found that, by the date of the hearing in this matter, the respondents had reviewed only 700 of the 5000 emails. It is found that each email was reviewed to determine if it was responsive to the complainants' requests and whether any information contained therein was subject to an exclusion or exemption to the mandatory disclosure requirements of the FOI Act. It is found that most of the 700 emails were not responsive, and that 10 were withheld because the respondents believed they fell within an applicable exemption.

12. It is found that, at the hearing on this matter, the respondents provided the complainants with a CD ROM on which were 20 emails responsive to their requests.

13. At the hearing on this matter, the complainants contended that the five months that it had taken the respondents to provide just 20 emails was not acceptable and failed to meet the standard of promptness required by the FOI Act.

14. The respondents contended, at the hearing on this matter, that even though two different divisions of the respondent department were working simultaneously to comply with the complainants' requests, it would still take months for them to fully comply because the requests are incredibly broad.

15. With respect to the timeliness of the respondents' response to the complainants' requests, §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." [Emphasis added]

16. The Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

17. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

18. The advisory opinion also states that "... timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority." (Emphasis added.)

19. It is found that the complainants' requests are broad and voluminous.

20. It is found that while the complainants' August 24, 2017 letter requests that the records be provided by 5:00 p.m. on September 11, 2017, there is no evidence in the administrative record of this case of the significance of that date and time or that such date and time was when the complainants' *needed* the records.

21. It is found that while the complainants did not provide a specific explanation of the importance of the records, the nature of the requested records and the fact that they were requested more than once, and by the lawyers representing the Connecticut State Police Union, made it clear that the requested records were important to the complainants.

22. It is found that:

- a. all records requests made to the respondent department are managed and complied with by the legal affairs unit;
- b. the respondent department receives records requests almost every week many of which are voluminous;
- c. the breadth of the legal affairs unit's responsibilities includes providing legal support to approximately 1,500 managers and staff in six divisions in multiple locations throughout the state;
- d. in addition to responding to records requests, the legal affairs unit provides training to state and local police officers and firefighters, oversees the 9-1-1 system, provides forensic and toxicology testing, and works with various partners on homeland security and emergency management; and
- e. at all times relevant to this complaint, the legal affairs unit had a total of 7 staff members.

23. It is found that there is no evidence in the administrative record of this case to establish the importance to the public of the respondent department completing any other agency business without the loss of the personnel time involved in complying with the complainants' request.

24. Finally, it is found that there is no other evidence in the administrative record of this case establishing the time constraints under which the respondents were required to complete their other work except that the attorney assigned to review the emails for applicable exemptions testified, and it is found, that he had other work assignments which limited the time he was able to spend reviewing the emails to "*about an hour here and there . . . when he had some time*" which "*time*" he did not have available for weeks in between.

25. Weighing all the factors related to the request, it is found that the respondent department did not comply with the complainants' requests in this case without undue delay; and it is therefore concluded that it violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

26. With respect to the complainants' request for civil penalties, §1-206(b)(2), G.S., provides in relevant part that:

"... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars."

27. The standard for when a violation is "without reasonable grounds" is analogous to the legal standard "without any substantial justification." Connecticut Department of Public Safety v. FOIC, et al., 1997 WL 537117 (Conn. Super.), affirmed, 247 Conn. 341 (1998). Similarly, the phrase "without reasonable justification" has been construed to mean "entirely unreasonable or without any basis in law or fact." Id., quoting Bursinkas v. Department of Social Services, 240 Conn. 141, 155 (1997).

28. It is found that the respondents' failure to comply promptly with records requests as required under the FOI Act appears to be a systemic issue. See Docket #FIC 2016-0775; Stephen Williams v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (March 22, 2017) in which this Commission found that the respondents' Reports and Records Unit estimated compliance with the complainant's request of one and one half to two years (due to an overwhelming work load and a reduction in staffing) was unacceptable and concluded that the

respondents had violated §§1-210(a) and 1-212(a), G.S., of the FOI Act for failing to provide the requested records in a prompt manner; Docket #FIC2017-402; Lauren Sievert, Mike Savino and Record Journal v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) in which the Commission found that the approximately two year wait for compliance with a straightforward, well-defined request that applied to a specific incident (due to the Reports and Records Unit being severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts) was unacceptable; and Docket #FIC 2017-0342; Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) and Docket #FIC 2017-0596; Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (May 14, 2018) in which the Commission found again that the approximately two year wait for compliance with a straightforward, well-defined request that also applied to a specific incident (due to the Reports and Records Unit being severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts) was, in both cases, unacceptable.

29. It is found that this case presents a particularly disturbing set of facts in which the respondents appeared earnest at the hearing in their representation that they take seriously the FOI Act's requirement to promptly comply with records requests but yet failed to demonstrate, either by policy or practice, that they view compliance with the FOI Act as much of a priority as their other work.

30. Consequently, it is found the respondents' violation of the promptness provisions of §§1-210(a) and 1-212(a), G.S., in this case was without reasonable grounds within the meaning of §1-206(b)(2), G.S., and is a serious concern for this Commission.

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

1. A civil penalty in the amount of \$100.00 is imposed against the respondent Commissioner.
2. The respondents shall forthwith provide the complainants with the records remainder of the 5000 records described in paragraph 10 of the findings, above, free of charge.
3. In complying with the order in paragraph 1, above, the respondents shall commit three uninterrupted hours a week, to the review of the remainder of the 5000 records described in paragraph 10 of the findings, above, until such review is complete. In addition, the respondents shall provide all responsive records for which they are not claiming an exemption, free of charge, to the complainants on a rolling basis, specifically at the end of every week with a log of any records that are withheld stating the reason(s).

4. Henceforth, the respondents shall strictly comply with the promptness requirements in §1-210(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.

A handwritten signature in cursive script, appearing to read "Cynthia A. Cannata".

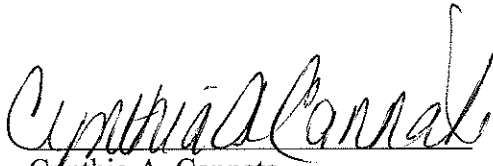
Cynthia A. Cannata
Acting Clerk of the Commission

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:

MARK DUMAS AND CONNECTICUT STATE POLICE UNION, 500 Main Street, East Hartford, CT 06118

DORA SCHIRO, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General Stephen R. Sarnoski, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission