

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Marwan Chankar,

Complainant

against

Docket #FIC 2018-0177

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

Respondents

December 19, 2018

The above-captioned matter was heard as a contested case on June 20, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 March 23, 2018, the complainant made a request to the respondents for “the entire case file in 1100380152 and ICNC CR13-122842-T State v. Marwan O. Chankar, including but not limited to: all reports, supplements, statements investigative and forensic reports, etc., that pertain to that case number.”
3. By letter dated and filed on April 13, 2018, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”)

Act by failing to comply with his March 23, 2018 records request. The complainant also requested the imposition of a civil penalty.

4. 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.

5. 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.

6. 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."

7. 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.

8. It is found that, by letter dated April 17, 2018, the respondents informed the complainant that his request was under review and would be processed in accordance with the FOI Act and any other applicable statute. It is found that the respondents informed the complainant that there may be a fee and that he will be notified as soon as possible of the results of their review and any fees that may be due.

9. It is found that, by letter dated April 20, 2018, the respondents informed the complainant that pursuant to §29-10b, G.S., the fee for a search/copy of the investigation report responsive to his request is \$16.00 and that upon receipt of that amount in a check, the search would commence.

10. It is found that the fee was paid by a check dated May 10, 2018 which was processed by the respondents on May 15, 2018.

11. It is found that, by letter dated May 15, 2018, the respondents informed the complainant that his check was received and that, while his request had been forwarded to the respondent department's Reports and Records Division, there was a substantial backlog in that unit and that the records, once located, would also have to be reviewed by the Department of Correction pursuant to §1-210(b)(18), G.S., before they would be provided to him.

12. At the hearing in this matter, the respondent's witness testified, and it is found, that there is a two year backlog in the Reports and Records unit and that no estimated time of compliance with the complainant's March 23, 2018 request could be provided. The respondent's witness testified, and it is found, that at the time of the hearing in this matter, the Reports and Records unit had not even conducted a search to retrieve the responsive records. The witness testified that the backlog was due to the volume of requests that the Reports and Records unit receives daily and that the unit is understaffed.

13. It is found that the approximately two year wait for compliance with a straightforward, well-defined request that applied to a specific incident is unacceptable.

14. It is concluded that the respondents are in violation of the disclosure provisions of the FOI Act by failing to promptly comply with the complainant's request.

15. 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.”

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. 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).

20. It is found that the complainant’s request was straightforward and well defined and was neither broad nor voluminous.

21. It is found that there is no evidence in the administrative record of this case of the time by which the complainant needed the requested records.

22. The respondents’ witness testified, and it is found, that the Reports and Records unit of the respondent department responds to formal and informal requests for records from various requesters including other agencies and divisions within the respondent department on a daily basis. The respondents’ witness also testified, and it is also found that, the Reports and Records unit of the respondent department is understaffed. Finally, the respondents’ witness testified that because the unit was understaffed and because of the volume of requests it receives, not only was there a two year backlog but also that a 36 day delay from the time the fee is received to the time records are retrieved by the Reports and Records unit is standard.

23. However, it is found that there is no evidence in the administrative record regarding: the time constraints under which the respondent department must complete its other work; the time and personnel required to comply with the complainant’s request; or the importance to the public of completing the other agency business of the respondent department without the loss of the personnel time involved in complying with the complainant’s request.

24. 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); Docket #FIC 2017-0643; Mark Dumas and Connecticut State Police Union 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 (August 8, 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 all three cases, unacceptable.

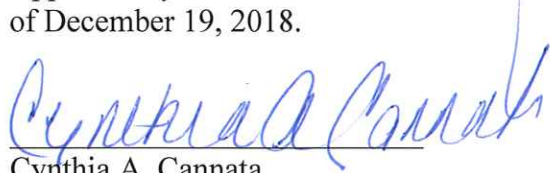
25. Consequently, it is found the respondents' violation of the promptness provisions of §§1-210(a) and 1-212(a), G.S., in this case, is without reasonable grounds within the meaning of §1-206(b)(2), G.S., and is a serious concern for this Commission.

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, which shall be vacated if the records in question are delivered to the complainant in two weeks time.
2. The respondents shall forthwith provide the complainant with a copy of the record(s) responsive to the complainant's request described in paragraph 2 of the findings, above.

3. 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 special meeting of December 19, 2018.



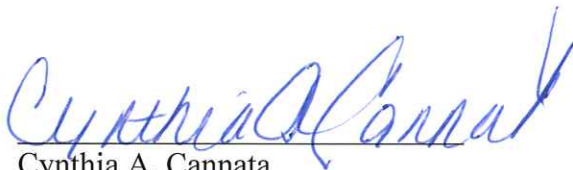
Cynthia A. Cannata
Acting Clerk of the Commission

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:

MARWAN CHANKAR, #272998, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

DORA B. 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 Terrence M. O'Neill, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06109 and Attorney Colin Milne, State of Connecticut, DESPP, 1111 Country Club Road, Middletown, CT 06614



Cynthia A. Cannata
Acting Clerk of the Commission