

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

John Atkinson and Atkinson
Properties, LLC,

Complainants

against

Docket #FIC 2017-0183

Commissioner, State of Connecticut,
Department of Public Health;
State of Connecticut, Department of
Public Health; Director, Uncas Health
District; and Uncas Health District.

Respondents

January 24, 2018

The above-captioned matter was heard as a contested case on May 25, 2017, 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. It is found that, by a single letter dated March 7, 2017, the complainants requested that the Department of Public Health (“DPH”) and the Uncas Health District (“UHD”) send them the following records:

. . . any and all correspondence, records, notes, letters, documents, memos and other records concerning the actions of the Uncas Health District and the CT Department of Public Health to undermine and/or circumvent the appeal rights of Atkinson Properties, LLC. . . , including but not limited to:

- a. A letter dated 4-27-16 from Patrick McCormack to John Atkinson, attempting to argue that his appeal was addressed incorrectly, even though the letter itself confirmed that both addresses had received it; and

- b. A phone message left for John Atkinson at [a particular telephone number] by Margarita Mogollon on 3-16-16 in which she stated that if [the complainants] did not comply, “we’ll have to turn it over to the attorneys and you don’t want that.”

3. It is found that, by letter dated March 8, 2017, UHD acknowledged the complainants’ request. It is found that UHD enclosed with its acknowledgment all records that were responsive to the request set forth in paragraph 2, above. It is further found that UHD’s March 8th letter indicated generally that, under the law, UHD is not obligated to disclose exempt public records to the complainants, indicating that it was possible that UHD might be in possession of some records for which it was claiming an exemption to disclosure.

4. It is found that, by letter dated March 10, 2017, DPH acknowledged the complainants’ request. It is found that DPH informed the complainants that it had not engaged in any actions with the UHD to “undermine and/or circumvent the appeal rights” of the complainants. It is further found that, with regard to the request in paragraph 2.a, above, DPH provided the complainants with a copy of the April 27, 2016 letter, and the email through which DPH had received such letter. It is further found that DPH informed the complainants that it had no records responsive to the request in paragraph 2.b, above.

5. It is found that, by letter dated March 17, 2017, the complainants responded to DPH. It is found that the complainants challenged DPH’s assertion that it had not engaged in any actions to undermine the complainants’ appellate rights. It is further found that the complainants asserted that there had to be additional communications between DPH and UHD. It is found that the complainants demanded a reply by March 22, 2017, and indicated that, if such reply was not forthcoming, they would appeal to the Commission.

6. It is found that, by letter dated March 20, 2017, UHD clarified that it was not claiming any exemptions, as no public records had been denied, and that it had not undertaken any efforts either to thwart the disclosure of public records or to undermine the complainants’ appellate rights.

7. Finally, it is found that, by letter dated March 22, 2017, DPH again corresponded with the complainants. It is found that DPH reiterated that it had taken no actions to interfere with the complainants’ appellate rights and that it had no additional records responsive records in its possession.

8. By letter dated and filed March 28, 2017, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide them with copies of the records described in paragraph 2, above.

9. 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.

10. 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.

11. 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.”

12. 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.

13. On May 19, 2017, the complainants filed a motion to continue the May 25, 2017 contested case hearing. The complainants contended that they required the assistance of the Commission’s ombudsman so that they could present their position effectively. The complainants further contended that they had made a “second follow-up request for information” from DPH and had not received said information. The complainants contended that they required the records from the follow-up request so that the matters in the instant case could be fully adjudicated. The respondents objected to the motion to continue, responding that the ombudsman’s role was not to provide assistance to the complainants during the course of the hearing, and that the subsequent request, which had been responded to, was not before the Commission in this instant matter.

14. After reviewing the Commission’s regulations,¹ as well as the complainants’ request for records and all of the correspondence between the parties, the hearing officer denied the motion to continue the hearing.

¹ See, e.g. Reg. of Conn. State Agencies, §1-21j-34a (b) (“After the order and notice of hearing . . . have been issued, no request for continuance or postponement of hearing shall be granted or permitted unless such request . . . states as the reason for the continuance or postponement that the parties are in the process of negotiating a settlement or other resolution of the case and that a continuance or postponement of the hearing is necessary to facilitate the successful completion of such settlement or resolution.”).

15. In addition, at the start of the contested case hearing, counsel for the DPH respondents moved the Commission to dismiss this case. Counsel contended that the complainant, John R. Atkinson, could not represent the interests of Atkinson Properties, LLC at the hearing because Mr. Atkinson was not an attorney. Counsel contended that, by appearing at the contested case hearing for Atkinson Properties, LLC, Mr. Atkinson was violating state law by engaging in the “practice of law” without a license. See Conn. Practice Book, §2-44A(a)(4) (“General Definition: The practice of law is ministering to the legal needs of another person and applying legal principles and judgment to the circumstances or objectives of that person. This includes, but is not limited to. . . [r]epresenting any person in . . . a formal administrative adjudicative proceeding . . . or in any administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.”)

16. The respondents’ motion to dismiss was denied. Pursuant to subsection (b) of the Conn. Practice Book §2-44A, which defines permissible exceptions to the unauthorized practice of law,² and Reg. of State Agencies, §1-21j-32,³ as well as Mr. Atkinson’s testimony, the hearing officer determined that Mr. Atkinson was the agent of Atkinson Properties, LLC. As such, the hearing officer further determined that Mr. Atkinson could permissibly represent the interests of Atkinson Properties, LLC, as well as his own interests, at the contested case hearing.

17. It is found that, on or around January 6, 2016, the complainants received a Public Health Order from the respondents concerning bed bugs observed at an Atkinson Properties LLC property. It is found that the Public Health Order included a pest management plan for the property with which the complainants were required to comply. It is found that the complainants attempted to appeal the Public Health Order, but, according to the respondents, the complainants failed to follow the required steps to perfect an appeal.

18. At the contested case hearing, the complainants contended that the respondents “colluded” to thwart their efforts to file an appeal of the Public Health Order. The complainants further contended that they believed that there should be records in the respondents’ possession evidencing such collusion, in addition to other responsive records.

² Conn. Practice Book §2-44A(b)(2)(B) states, as follows: “(b) Exceptions. Whether or not it constitutes the practice of law, the following activities by any person are permitted: . . . (2) Acting as a lay representative authorized by administrative agencies or in administrative hearings solely before such agency or hearing where: . . . (B) Such conduct is authorized by statute, or the special court, department or agency has adopted a rule expressly permitting and regulating such practice.”

³ Reg. of Conn. State Agencies, §1-21j-32 provides, as follows: “Each person authorized to participate in a contested case as a party or as an intervenor shall file a written notice of appearance with the clerk. Such appearance may be filed on behalf of parties and intervenors by an attorney, an agent, or other duly authorized representative subject to the rules hereinabove stated. The filing of a written appearance may be excused by the presiding officer.” (Emphasis supplied).

19. It is found that the DPH respondents searched their records and files, including their phone records,⁴ and gathered all records responsive to the request set forth in paragraph 2, above. Specifically, it is found that the DPH respondents searched all relevant files in their public health hearing office, which, based on the testimony, is where responsive records would be located. It is further found that, while DPH did not maintain the letter requested in paragraph 2.a, above, it reached out to UHD to obtain a copy of this letter so that it could provide it to the complainants. It is further found that the DPH respondents provided all responsive records to the complainants free of charge.

20. It is further found that UHD respondents searched their records and files, and gathered all records responsive to the request set forth in paragraph 2, above. Specifically, it is found that the UHD respondents located the case file pertaining to the respondents, copied the case file and disclosed a copy of the records contained in the file to the complainants free of charge.

21. The Commission finds that the respondents conducted a thorough search for responsive records.

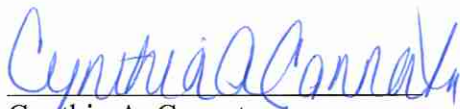
22. It is further found that, other than the records that have been disclosed to the complainants, the respondents do not maintain responsive records.

23. Accordingly, 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 January 24, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

⁴ The Commission notes that, while the complainants requested a phone message in paragraph 2.b, above, the respondents' search yielded no such record.

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 ATKINSON, AND ATKINSON PROPERTIES, LLC, 45 Bank Street, New London, CT 06320

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC HEALTH; c/o AAG Kerry Anne Colson, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120; **DIRECTOR, UNCAS HEALTH DISTRICT; AND UNCAS HEALTH DISTRICT,** c/o Patrick R. McCormack, M.P.H., UNCAS Health District, 401 West Thames Street, Suite 106, Norwich, CT 06360



Cynthia A. Cannata
Acting Clerk of the Commission