

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Marc Criscio,

Complainant

against

Docket #FIC 2017-0562

Director, Public Works Department,
City of New Haven; Public Works
Department, City of New Haven; and
City of New Haven,

Respondents

July 11, 2018

The above-captioned matter was scheduled to be heard as a contested case on November 29, 2017 at 11:00 a.m., at which time neither party appeared. A Report of Hearing Officer dated December 11, 2017 was issued on January 23, 2018, recommending dismissal of the complaint for failure to prosecute. That Report was then considered at the Commission's February 28, 2018 regular meeting, at which time the Commission ordered the matter reopened.

The matter was then heard as a contested case on April 3, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complainant.

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 September 14, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for certain public records.
3. It is found that the complainant made an August 17, 2017 request to the respondent Director of Public Works for copies of his personnel records and files during the time he was working for the respondent Department of Public Works.
4. It is found that the New Haven Office of the Corporation Counsel provided the complainant with 25 pages of responsive records located not in the respondents' files, but in the Office of Labor Relations, on October 26, 2017.

5. It is found that the respondents themselves acknowledged the request on November 6, 2017, indicating that they had no success in locating the complainant's personnel file within the Department of Public Work's storage area.

6. It is found that the Office of the Corporation Counsel also located the remainder of the complainant's personnel file, an additional 138 pages located in the City's Human Resources office and the City's Risk Management Division, and delivered copies to the complainant on November 8, 2017.

7. 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.

8. Section 1-210(a), G.S., provides in relevant part:

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.

9. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

11. It is found that the respondents and the Office of the Corporation Counsel conducted a diligent search for the requested records, and provided all the records responsive to the complainant's request, notwithstanding that those records were not physically located in the respondents' offices.

12. The complainant is specifically seeking a portion of his personnel file where he requested a job transfer before his termination from employment with the City.

13. However, it is found that the respondents and the Office of the Corporation Counsel searched all the locations where such a transfer request might reasonably have been located, and no such record was found.

14. It is concluded that the respondents did not violate the FOI Act as alleged.

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 July 11, 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:

MARC CRISCIO, 64 Paul Street, East Haven, CT 06513

**DIRECTOR, PUBLIC WORKS DEPARTMENT, CITY OF NEW HAVEN;
PUBLIC WORKS DEPARTMENT, CITY OF NEW HAVEN; AND CITY OF
NEW HAVEN**, c/o Attorney Kathleen Foster, City of New Haven, 165 Church Street,
New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission