

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Nancy Burton,

Complainant

against

Docket #FIC 2017-0660

Commissioner, State of Connecticut,
Department of Agriculture; and
State of Connecticut, Department of
Agriculture,

Respondents

July 25, 2018

The above-captioned matter was heard as a contested case on January 22, 2018, at which time the complainant 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 letter dated October 25, 2017, the complainant requested that the respondents provide her with copies of “all records of the CT Department of Agriculture pertaining to its collection and analysis of milk destined for human consumption for the presence of radioisotopes for the period January 1, 2015 to the present.”
3. It is found that, by email dated December 20, 2017, the respondents acknowledged the request, and indicated that they had no records responsive to the request.
4. By letter dated and filed November 2, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act (“FOI Act”) by failing to provide her with a copy of the records described in paragraph 2, above, and by failing to respond to her request within four business days. In the complaint, the complainant requested that the Commission order the immediate release of the requested records and order the “[r]eform and correction of [the respondents’] policies and procedures regarding the FOI Act requests to assure future compliance.”

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 1-206(a), G.S., provides in relevant part, as follows:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request. . . . Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

7. 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.

8. 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.”

9. 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.

10. It is found that the respondents received the complainant’s request on December 8, 2017. See Ex. 1.

11. Wayne Kasacek, Assistant Bureau Director for the Connecticut Department of Agriculture, appeared and testified at the contested case hearing.

12. It is found that Mr. Kasacek is very knowledgeable about the kind of testing the respondent department conducts, when such tests are performed, and where the records pertaining to such tests are located within the department.

13. It is found that the respondent department does not sample milk for the presence of "radioisotopes."

14. It is therefore found the respondents do not maintain any records responsive to the request.

15. With regard to the complainant's contention that the respondents were required to respond to her, in some way, within four business days, §1-206(a), G.S., provides that failure to comply with a request to copy or inspect records within the applicable number of days shall be "deemed" a denial, thus beginning the time within which a complaint may be filed. However, in this case, there are no responsive records. Accordingly, the respondents cannot comply with the complainant's request.

16. It is found that the complainant took full and proper advantage of her rights under the FOI Act; however, the respondent never denied her responsive records.

17. 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 July 25, 2018.



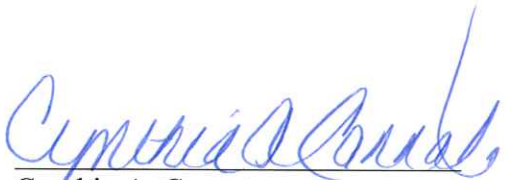
Cynthia A. Cannata
Acting Clerk of the Commission

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:

NANCY BURTON, 147 Cross Highway, Redding, CT 06896

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF AGRICULTURE; AND STATE OF CONNECTICUT, DEPARTMENT OF AGRICULTURE, c/o Assistant Attorney General Sharon Seligman, Office of the Attorney General, 55 Elm Street, PO Box 120, Hartford, CT 06141-0120



Cynthia A. Cannata
Acting Clerk of the Commission