

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dameisha Moore,

Complainant

against

Docket #FIC 2017-0704

Chief, Police Department,
City of Danbury; Police
Department, City of Danbury;
and City of Danbury,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on February 21, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

On July 25, 2018, the Hearing Officer issued a Proposed Final Decision. Subsequently, at its regular meeting of August 22, 2018, the Commissioners unanimously voted to remand the matter to the Hearing Officer for further review.

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 letters all dated October 19, 2017, the complainant made three separate records requests to the respondents for copies of four different internal affairs investigative reports (i.e., IA#150403A, IA#150403B, IA#160419, and IA report regarding an alleged racial epithet), including, among other information, any notes created during the investigations, the name and rank of the investigating police officials, list of persons interviewed and any exhibits supporting the disposition of the internal affairs complaints. It is found that on October 19, 2017, the complainant also made a request for copies of emails between various officers on June 2, 2016.
3. It is found that, by letter dated October 25, 2017, the respondents, through their attorney, informed the complainant that records relating to the internal affairs investigation of the alleged racial epithet had already been provided to her in response to a prior, substantially similar records request, which she had yet to pay for, and would not be provided again. With

respect to the requests for emails,¹ the respondents informed the complainant that “it will take (4) weeks to locate, isolate from others and conduct an exemption review and index.” They also informed the complainant that she identified keywords that were “overbroad” and contained “some words common to dozens of conversations and will require as yet undetermined time to print and conduct an exemption review and index”, and requested that she narrow the search terms. In addition, the respondents informed the complainant that the fulfillment of the requests for the remaining three internal affairs investigative reports (i.e., IA#150403A, IA#150403B, IA#160419) “will take an as yet undetermined time to conduct an exemption review and index.”

4. It is found that by email sent on October 25, 2017, the complainant informed the respondents that she has yet to receive all records responsive to her previous records request relating to the alleged racial epithet, and, had already submitted payment for those records that she had received. She agreed to resubmit the payment. The complainant also requested that the respondents identify any records responsive to her October 19th requests, which they are withholding, and provide a detailed explanation as to why such records are being withheld. In addition, the complainant agreed to narrow the search terms, but did not agree to the four week delay, described in paragraph 3, above.

5. It is found that by email sent on November 2, 2017, the complainant followed-up with the respondents inquiring as to the status of her October 19th requests.

6. By email received and filed on November 21, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her access to the records requested in the complainant’s October 19th requests, described in paragraph 2, above.

7. Section 1-200(5), G.S., provides:

“[p]ublic 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 that:

[e]xcept 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

¹ The Commission notes that in their October 25th letter, the respondents incorrectly referenced the date of the subject emails as June 6, 2016. The correct date is June 2, 2016.

and every person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

9. 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.”

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

11. It is found that, by letters dated November 22, 2017, December 8, 2017, and February 5, 2018, respectively, the respondents provided the complainant with over 250 pages of documents responsive to her October 19th requests. It is found that the respondents, at the request of the State Attorney’s Office, initially withheld certain records that they claimed related to an ongoing investigation and pending prosecution, and were therefore exempt from disclosure. It is found, however, that such records were subsequently provided to the complainant. It is also found that the respondents provided the complainant with an index identifying the documents claimed to be exempt from disclosure.

12. At the hearing, the complainant contended that the respondents purposefully delayed fulfilling her October 19th requests, described in paragraph 2, above. In addition, although the complainant acknowledged receiving records responsive to such requests, the complainant contended that the respondents have failed to provide her with all responsive documents including, but not limited to, emails, any notes created during the investigations, the name and rank of the investigating police officials, list of persons interviewed and any exhibits supporting the disposition of the internal affairs complaints. She also contended that the respondents improperly withheld records regarding the alleged racial epithet on the grounds that such records had already been provided to her in response to a prior records request.

13. At the hearing, the respondents contended that they have provided the complainant with all records responsive to her October 19th requests that they maintain. In addition, Attorney Dianne Rosemark, who, among other responsibilities, is responsible for handling FOI matters for the City of Danbury, testified that the complainant’s October 19th requests generated thousands of emails and that she spent hours working on fulfilling these requests as well as on several other requests (a total of nine between April 2017 and October 2017), from the complainant. She testified that, given the greater workload, she also sought assistance from outside counsel with processing the October 19th requests.

14. With respect to the IA report regarding the alleged racial epithet, it is found that a public agency cannot condition compliance with a records request on whether the requester has an outstanding balance due to a prior records request. However, pursuant to §1-212(c) of the FOI Act, “[a] public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.”

15. It is unclear from the record whether the fee for the records regarding the alleged racial epithet, which were responsive to the complainant’s October 19th request, was estimated

to be ten dollars or more. However, from the facts on the record, including the volume of records generated and produced in response to the complainant's October 19th requests, it can be reasonably inferred that the cost for copies was greater than ten dollars.

16. With respect to the requests for the June 2, 2016 emails, and IA reports ## 150403A, 150403B and 160419, it is found that the respondents have provided the complainant with all records responsive to such requests that they maintain or keep on file. A public agency is not required to create records in response to a FOI request.

17. With respect to the issue of promptness, 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.

18. 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.

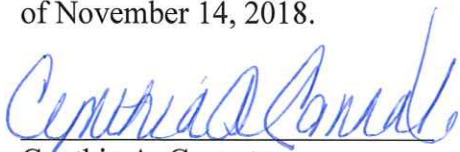
19. It is found that the respondents made a good faith effort to locate and retrieve records that were responsive to the complainant's October 19th requests, in a prompt manner.

20. Under the facts and circumstances of this case, 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 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:

DAMEISHA MOORE, P.O. Box 582, Danbury, CT 06813

CHIEF, POLICE DEPARTMENT, CITY OF DANBURY; POLICE DEPARTMENT, CITY OF DANBURY; AND CITY OF DANBURY, c/o Attorney D. Randall DiBella, Cramer and Anderson, 51 Main Street, New Milford, CT 06776



Cynthia A. Cannata
Acting Clerk of the Commission