

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Michael Aronow,

Complainant

against

Docket #FIC 2018-0329

President, State of Connecticut,
University of Connecticut; and State of
Connecticut, University of Connecticut,

Respondents

January 9, 2019

The above-captioned matter was heard as a contested case on October 2, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2018-0326, Michael Aronow v. Director, Office of Communications, State of Connecticut, University of Connecticut; and Office of Communications, State of Connecticut, University of Connecticut.

After consideration of the entire record, the following facts are found and conclusions of law are reached:

1. It is found that the respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that on May 22, 2018, the complainant requested a copy of all records showing activity for his Academic Fund and his Enrichment Fund in the Department of Orthopedic Surgery at the University of Connecticut School of Medicine. The complainant requested records for three years: 2010, 2011 and 2012.
3. It is found that, on May 22, 2018, the respondents acknowledged the complainant's request.
4. It is found that, on May 23, 2018, the respondents informed the complainant that they had "contacted the Orthopedic Surgery Department" with respect to his request and had been informed that "there are no records responsive to your request as the retention requirement for such records is three years."
5. It is found that later on May 23, 2018, the complainant sent an email to the respondents asking who in the Orthopedic Surgery Department stated that no records existed. The complainant stated in the email that he considered the request to be "closed."

6. It is found that the respondents did not answer the complainant's question.

7. It is found that, on May 24, 2018, the complainant made another request for copies of records, which was an expanded and more precise version of his first request. The complainant requested copies of "any documents relating to the amount of money in the School of Medicine Academic Fund or Academic Enrichment Fund of current or past faculty of the Department of Orthopaedic Surgery at the University of Connecticut School of Medicine."

8. The complainant also provided a detailed list of suggestions or instructions for the search, such as descriptions of the content of the records, when they were compiled, whose computers should be searched and the search terms. In particular, the complainant stated:

Computer and email search terms should include but not be limited to:

- i. "AEF" anywhere within the file name
- ii. "Academic Enrichment Fund" anywhere within the file name
- iii. "School of Medicine Fund" anywhere within the file name
- iv. "School of Medicine Academic Fund" anywhere within the file name
- v. "SOM Fund" anywhere within the file name
- vi. "ALL Faculty 3-17079 AEF spreadsheets" anywhere within the file name
- vii. "MSA Accounts Workbook" anywhere within the file name
- viii. Other terms containing the words that the department administrator and staff responsible for managing these two funds currently and previously used to label these files[.]

9. It is found that the respondents acknowledged the request on May 24, 2018.

10. It is found that, on June 19, 2018, the complainant asked the respondents for an estimate as to the completion date of his request, to which the respondents replied that they were still compiling records and would be back in touch when records were available.

11. By email filed June 19, 2018, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of the requested records.

12. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

13. 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, ... or (3) receive a copy of such records in accordance with section 1-212.

14. 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.

15. 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.

16. It is found that, on August 31, 2018, the respondents provided responsive records.

17. It is found that, on September 1, 2018, the complainant informed the respondents that he particularly needed certain information from Fiscal Year 2012 (“FY2012”) that was missing from the records provided on August 31, 2018. The complainant, a former faculty member of the respondents, suggested a place where such data might be stored electronically.

18. It is found that on October 1, 2018, the respondents provided additional responsive records.

19. It is found that the respondents performed a diligent search for records, but were unable to find the data for Fiscal Year 2012. The respondents suggested that the data may have been disposed of or mishandled in some way during the respondents’ change of financial systems during 2012, but they were otherwise unable to explain why they were able to retrieve the requested records from before FY2012 as well as later than FY2012, but not for FY2012.

20. The respondents agreed to continue their search in additional locations suggested by the complainant at the hearing in this matter.

21. It is found that the respondents searched for responsive records as suggested by the complainant and collected two responsive records that had not been previously provided. It is found that the respondents provided such records to the complainant.

22. It is found that in searching for responsive records, the respondents did not use each of the precise terms suggested by the complainant in his request; instead, the respondents searched “based on [their] understanding of the request and the universe of potentially responsive records,” and viewed the complainant’s list of terms to be suggestions for how to effectuate the search described in paragraph 7, above, and not individual requests for records. (See Exhibit 2, after-filed.)

23. The complainant testified that he made his initial request in May 2018 in order to receive the records for his use at a proceeding on September 1, 2018. It is found that three months for compliance with a request for an electronic spreadsheet is not prompt, even in light of the respondents' other pressing matters.

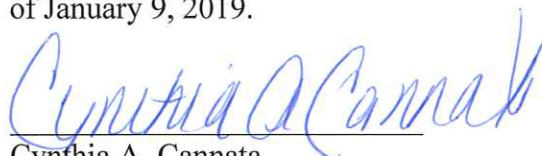
24. It is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S. Nevertheless, the Commission appreciates the diligence of the respondents' counsel who ultimately supervised the search for responsive records.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall endeavor to locate and search the "H" drive for responsive records, particularly those records pertaining to FY2012, as suggested by the complainant in his November 7, 2018 email (See After-Filed Exhibit 2). The respondents shall provide any records collected from such search to the complainant. If the respondents are unable to search the "H" drive and/or if the respondents discover no new responsive records, the respondents shall inform the complainant of such result in writing.

2. Henceforth the respondents shall comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 9, 2019.



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:

MICHAEL ARONOW, Orthopedic Associates of Hartford, P.C., 31 Seymour Street, Suite 100, Hartford, CT 06106

**PRESIDENT, STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT;
AND STATE OF CONNECTICUT, UNIVERSITY OF CONNECTICUT**, c/o Attorney
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Cynthia A. Cannata
Acting Clerk of the Commission