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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106
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Herbert Mitchell,
Complainant(s)

against

Human Services Administrator, State of
Connecticut, Department of Veterans' Affairs;
and State of Connecticut, Department of
Veterans' Affairs,

Respondent(s)

Notice of Rescheduled
Commission Meeting

Docket #FIC 2011-409

May 14, 2012

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, May 9, 2012 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, May 23, 2012.**

Any brief, memorandum of law or request for additional time, as referenced in the April 13, 2012 Transmittal of Proposed Final Decision, should be received by the Commission on or before May 18, 2012.

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Herbert Mitchell
Tanya Feliciano DeMattia, Esq.

5/14/2012/FIC# 2011-409/ReschedTrans/wrbp/KKR/TCB

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Herbert Mitchell,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-409

Human Services Administrator, State of
Connecticut, Department of Veterans' Affairs;
and State of Connecticut, Department of
Veterans' Affairs,

Respondent(s)

April 13, 2012

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 9, 2012**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE April 27, 2012**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE April 27, 2012**. PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE April 27, 2012**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Herbert Mitchell
Tanya Feliciano DeMattia, Esq.

4/13/12/FIC# 2011-409/Trans/wrbp/KKR/TCB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Herbert Mitchell,

Complainant

against

Docket #FIC 2011-409

Human Services Administrator,
State of Connecticut, Department of
Veterans' Affairs; and State of
Connecticut, Department of
Veterans' Affairs,

Respondents

March 5, 2012

The above-captioned matter was heard as a contested case on January 24, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated May 5, 2011, the complainant requested that the respondents "retrieve all documents, e-mails, complaints, inquiries, faxes, [and] correspondence involving myself and others. This is to include information and conversations between all CT DOVA employees and VARO Hartford personnel....This includes Governor Dan Malloy's people, Ex. Aaron Frankel....I am looking for all DATA from June 1, 2010 to May 5, 2011 only."
3. It is found that, by letter dated May 5, 2011, the respondents acknowledged receipt of the request, described in paragraph 2, above.
4. It is found that, by letter dated July 8, 2011, the respondents informed the complainant that no documents existed "involving you and others."
5. By letter of complaint, dated and filed August 2, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the requests for records described in paragraph 2, above.
6. 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.

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 . . . (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 records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a).

10. It is found that, by letter dated August 2, 2011, the complainant resubmitted the request, described in paragraph 2, above, and that, by letter dated August 3, 2011, the respondents requested that the complainant clarify such request.

11. It is found that, by letter dated August 8, 2011, counsel for the complainant requested from the respondents a copy of the complainant’s entire personnel file, and further requested that such copies be provided directly to him, rather than to the complainant.

12. It is found that, by letter dated September 20, 2011, the respondents provided to complainant’s counsel copies of certain records from the complainant’s personnel file, but withheld other records pertaining to a “workplace violence” investigation that was then “on-going” (“investigation records”). It is further found that the investigation records were hand-delivered to the complainant’s union representative in January 2012.

13. At the hearing in this matter, the complainant argued that the respondents maintain records responsive to the request, described in paragraph 2, above, that they continue to withhold from him. For example, the complainant stated his belief that the respondents maintain records regarding Aaron Frankel that they have not provided to him.

14. At the hearing in this matter, the respondent human services administrator testified that she understood the request, described in paragraph 2, above, to encompass only those records relating to communications “between the complainant and others,” and that therefore, she did not conduct a search for records pertaining only to Aaron Frankel.

15. It is found that the respondents reasonably interpreted the request, described in paragraph 11, above, from the complainant’s counsel, to be a restatement or clarification of, the request, described in paragraph 2, above. It is further found that the respondents have provided the complainant with all records they maintain concerning the complainant.

16. At the hearing in this matter, the complainant argued that the respondents failed to provide him with copies of the investigation records, described in paragraph 12, above, because such records were hand-delivered to his union representative, rather than to him directly. It is found that the records were hand-delivered to the complainant’s union representative at the complainant’s Loudermill hearing. It is found that the complainant has made no showing that his representative has withheld such records from him, and it is further found that the representative attended the hearing in this matter with, and in support of, the complainant. Under such circumstances it is found that the respondents did, in fact, provide the complainant with copies of the investigation records in January, 2012.

17. The complainant also argued that the respondents improperly withheld the investigation records from him, until after they completed their “investigation.”

18. It is found, consistent with the respondents’ stated position, that they withheld the investigation records solely because the investigation was not yet complete, and not because they believed the records were exempt from disclosure pursuant to any exemption set forth in the FOI Act, or in elsewhere in the general statutes.

19. Accordingly, it is found that the respondents did not have a statutory basis on which to withhold the investigation records from the complainant during the investigation. Although, as noted in paragraph 12, above, the respondents eventually provided such records to the complainant, it is found that they failed to do so promptly, as required by §§1-210(a) and 1-212(a), G.S., due to the fact that they improperly withheld the investigation records during the pendency of the investigation.

20. Based upon the foregoing, it is concluded that the respondents violated the promptness provisions in §§1-210(a) and 1-212(a), G.S.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions of the FOI Act.

A handwritten signature in cursive script, reading "Kathleen K. Ross".

Kathleen K. Ross
as Hearing Officer

FIC 2011-409/hor/SDL/kkr/03052012