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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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Sandra Cady,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-318

Anne Noble, President, State of Connecticut,  
Connecticut Lottery Corporation; and State of  
Connecticut, Connecticut Lottery Corporation,  
Respondent(s)

March 26, 2013

### 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, April 24, 2013**. 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 12, 2013**. 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 12, 2013**. **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 12, 2013**, 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: Sandra Cady  
Beverly W. Garofalo, Esq.,  
Holly L. Cini, Esq., and Ashley Totorica, Esq.

2013-03-26/FIC# 2012-318/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Sandra Cady,

Complainant

against

Docket #FIC 2012-318

Anne Noble, President, State of  
Connecticut, Connecticut Lottery  
Corporation; and State of Connecticut,  
Connecticut Lottery Corporation;

Respondents

March 26, 2013

The above-captioned matter was heard as a contested case on March 21, 2013, at which time the complainant and the respondents appeared 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 email dated May 14, 2012, the complainant requested from the respondents copies of:
  - (a) Dennis Chapman's stipulated agreement for his separation of employment from the Connecticut Lottery Corporation (CLC);
  - (b) John Ramadei's stipulated agreement for his separation of employment from the CLC;
  - (c) Any disciplinary letters/memos from Anne Noble to John Ramadei regarding insubordination and/or work performance; and
  - (d) Documents/notes/files Anne Noble created concerning me, Sandra Cady, as her subordinate regarding work related issues.

3. It is found that, by email dated May 17, 2012, the respondents acknowledged receipt of the request, described in paragraph 2, above, provided the records responsive to the request described in paragraphs 2(a) and 2(b), above, and informed the complainant that the remainder of the responsive records were being gathered and that they would review them and be back in touch with her.

4. It is found that, by email dated May 30, 2012, the complainant requested from the respondents copies of:

(a) Memo from Anne Noble to Gale Matteson, Subject: Self-evaluation for 2011;

(b) Any and all letters of: offers of employment, promotions, increases in compensation, decrease in compensation for all managers of the CLC, past and present;

(c) Excel worksheets for calculations of managerial salary increases and calculation of management incentive payments which includes annual performance review ratings for all years available since the CLC was established (these should be found in the Management Compensation notebook); and

(d) Phone bills, both land line and Blackberry for Anne Noble for the months beginning 12/11 through 4/12.

5. It is found that, by email dated June 1, 2012, the respondents acknowledged receipt of the request, described in paragraph 4, above, and informed the complainant that they would respond in more detail to such request the following week.

6. It is found that, by email dated June 7, 2012, the complainant renewed an April 17, 2012 request to the respondents for copies of:

(a) Files from my "p" drive copied onto a CD;

(b) Emails from my DAS and OLR folders;

(c) My book I put together on Workers Compensation; and

(d) My "Length of Service" files.

7. By letter of complaint, undated but filed June 14, 2012, 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

paragraphs 2, 4 and 6, above. In addition, the complainant requested that the Commission impose a civil penalty against the respondents.

8. 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.

9. 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.

10. 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.”

11. It is found that the records described in paragraphs 2, 4 and 6, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a).

12. It is found that, on July 2, 2012, and November 14, 2012, the respondents provided to the complainant the remainder of the requested records described in paragraph 2, above.

13. It is found that, on July 2, 2012, the respondents provided some, but not all, records responsive to the request described in paragraph 4(d), above; that on October 26, 2012, they provided records responsive to the request described in paragraph 4(a), above, as well as the remainder of the records responsive to the request described in paragraph 4(d), above; and that on November 14, 2012, the respondents provided records to the complainant responsive to the request described in paragraph 4(b), above.

14. It is found that, on October 26, 2012, the respondents provided the complainant with records responsive to the request described in paragraph 6(c), above and notified her that they did not understand her request for "Length of Service" files, described in paragraph 6(d), above, and requested that she provide clarification of same. In addition, the respondents informed her that the records responsive to the requests described in paragraphs 6(a) and 6(b), above, would number in the thousands of pages and asked that she identify the specific documents on her "p" drive and in her folders she was seeking.

15. It is found that, by letter dated December 14, 2012, the respondents provided the complainant with a list of all files they maintain responsive to the requests described in paragraphs 6(a) and 6(b), above. It is found that, from that list, the complainant, by email dated February 2, 2013, identified the specific files from her "p" drive and "DAS" and "OLR" files she wished to have copied. It is found that the respondents, as of the hearing in this matter, had not provided the complainant with copies of any of those records, but that they had printed them out, and were in the process of reviewing them for possible redactions.

16. At the hearing in this matter, the complainant stated that, although the respondents had provided her with the majority of the documents she requested, she believed that their compliance with her requests was not prompt. In addition, it is found that the respondents, as of the hearing in this matter, had not provided the complainant with the records responsive to the request, described in paragraph 4(c), above.

17. With regard to the complainant's claim that the records described in paragraphs 2, 4 and 6, above, were not provided to her "promptly," 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. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

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 Attorney Lana Glovach is General Counsel for the CLC and that the legal department at the agency employed, during the relevant time period, as many as two other attorneys, but at times employed no other attorneys. It is found that the CLC is a quasi-public agency that is statutorily mandated to raise revenue for the State of Connecticut, and that therefore, the CLC is run much like a business, with all the priorities and legal issues associated with doing so. It is found, therefore, that Attorney Glovach's responsibilities at CLC are broad, and include reviewing and responding to FOI requests, procurement, contracts, employment issues, game rules and game design, and intellectual property issues. Significantly, it is found that the CLC, and Attorney Glovach in particular, was involved, during 2012, in a patent infringement lawsuit related to certain lottery games that occupied a significant portion of her time. In addition, Attorney Glovach testified, and it is found, that there were several other FOI requests which required her attention during the relevant time period. It is found that the volume of records requested by the complainant in connection with this matter was significant.

20. It is found that the respondents have provided copies of the requested records to the complainant as they have become available, and kept her informed, in writing, as to their progress in fulfilling her requests. It is further found that the respondents, in this case, have made the complainant's requests a priority among other priorities, and have attempted to balance their obligations under the FOI Act with their other work. Based upon the testimony of Attorney Glovach at the hearing in this matter, it is found that the respondents take their responsibilities under the FOI Act seriously and will continue to work, within their limited resources, to fulfill the request, described in paragraphs 6(a) and 6(b), above. Based upon facts and circumstances of this case, it is found that the respondents have responded promptly to the complainant's requests.

21. Accordingly, it is concluded that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged.

22. With regard to the request described in paragraph 4(c), above, it is found that the respondents maintain such records, but did not provide them to the complainant because they had previously provided her with *other* records that contained the same or similar information. According to the respondents, compliance with the request, described in paragraph 4(c) would be therefore "duplicative." It is found that the respondents did not claim any exemption for the records described in paragraph 4(c), above.

23. It is concluded that the respondents violated the FOI Act by failing to comply with the request for records, described in paragraph 4(c), above.

24. With regard to the request described in paragraph 6(d), above, it is found that the complainant did not respond to the respondents' October 26, 2012, letter seeking clarification of such request. It is found that the respondents could not reasonably have been expected to fulfill such request under these circumstances.

25. Thus, it is concluded, based upon the foregoing, that the respondents did not violate the FOI Act by failing to provide the records described in paragraph 6(d), above.

26. The Commission declines to consider the imposition of civil penalties in this matter.

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

1. Forthwith, the respondents shall provide a copy of the record(s), described in paragraph 4(c), above, to the complainant, free of charge.

A handwritten signature in cursive script, appearing to read "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross  
as Hearing Officer