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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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Priscilla Dickman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-643

Director, State of Connecticut, Health Affairs
Policy Planning, Department of Community
Medicine and Health Care, University of
Connecticut Health Center; and State of
Connecticut, University of Connecticut Health
Center,

Respondent(s)

May 29, 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, June 26, 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 June 14, 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 June 14, 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 June 14, 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: Priscilla Dickman
Jeffrey M. Blumenthal, AAG and Stephen J. Courtney, AAG

5/29/2013/FIC# 2012-643/Trans/wrbp/CALI/PSP

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Priscilla Dickman,

Complainant

against

Docket #FIC 2012-643

Director, State of Connecticut,
Health Affairs Policy Planning, Department of
Community Medicine and Health Care, University
of Connecticut Health Center; and State of
Connecticut, University of Connecticut Health Center,

Respondents

May 16, 2013

The above captioned matter was heard as a contested case on April 23, 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)(A), G.S.
2. It is found that, by letter dated November 14, 2012 and filed with the Commission on November 15, 2012, the complainant appealed to the Commission, alleging that the failure of the respondents to provide requested records violated the Freedom of Information Act ("FOIA").
3. It is found that the two paragraph complaint letter specifically focuses on "emails, documents and records which discuss a report titled NICB- National Insurance Crime Bureau report in regards to a supposed workers' compensation claim of January 16, 2005, which for some reason mentions my name, Priscilla Dickman." The complaint further states that the report "involved an insurer, GAB Robins now known as Gallagher Bassett". The second and last paragraph of the complaint begins with the sentence: "I would like to file a complaint in so much as I do not understand why documents received or sent by the University which reference me personally would not be able to be disclosed..." (emphasis added).
4. It is found that the complaint also states "I have made a request for documents... [and] I have attached their response..." The complaint included an attachment with portions of emails between the complainant and the respondents. One

email from the respondent Director was an update on the status of all active records requests by the complainant. Another email, from the complainant to the respondent Director, stated her intention, if "no resolution" was reached by November 16, 2012, to file one complaint encompassing all requests that the respondent Director had previously stated were active. There is no statement in the complaint, including attachments, as to whether a resolution was, in fact, reached or not. And of course, the complaint herein was filed the day before the expiration of the November 16, 2012 deadline.

5. It is found that the complaint on its face did not include any clear statement of the records requested, either by direct statement or by attachment of a records request.

6. At the hearing, when asked for a copy of the relevant records request, the complainant offered a copy of a letter to the Commission dated August 21, 2012, which was in the nature of a complaint concerning emails and other computer based records of Anthony Borda concerning the complainant. At the hearing and in post hearing exhibits filed by the complainant, it became evident that the complainant's focus has now fixed upon Anthony Borda's records.

7. Also at the hearing, the respondents argued that the references in the complaint to the workers' compensation claim and the NICB- National Insurance Crime Bureau report caused the respondents to believe that the complaint concerned the complainant's records requests set forth in her letters of October 4, 2012 and October 24, 2012. Of course, these letters immediately preceded the November 14, 2012 letter of complaint. The October 4, 2012 letter was a lengthy, detailed request for numerous records concerning the National Insurance Crime Database and "PI" firms. The October 24, 2012 letter was a briefer request for records "received from the former GAB Robbins, now called Gallagher Bassett Insurance Company..." and records concerning a report to the National Insurance Crime Database.

8. As found at paragraph 3, above, the complaint states that the complainant filed the complaint because she wanted access to records that "reference me personally". In contrast, the records request concerning Mr. Borda (see paragraph 6, above) involves expanded search terms including Mr. Borda's records that use the words "confidential", "jewelry", "travel", "workers compensation", "fraud", "ethics", and "pension". The scope of this records request clearly goes well beyond the records discussed in the complaint letter which are, again, records that refer to the complainant by name.

9. There is a basic requirement in administrative proceedings that the adverse party "be fairly apprised of the nature of the offense with which he is charged." Jaffe v. State Department of Health, 135 Conn. 339, 352, 64 A. 2d 330. The adverse party must be able to prepare his case. Douds v. International Longshoremen's Association, 241 F. 2d 278, 283 (2d Cir.). This last consideration is particularly relevant here where the complainant has made approximately thirty FOIA requests to the respondents in recent years. Without a straightforward statement in the complaint, it is by no means self evident to the respondents what will be at issue in a given hearing. The respondents were

reasonable in their determination that the complaint was based upon the complainant's records requests of October 4, 2012 and October 24, 2012.

10. Based on the forgoing, it is further found that the complaint dated November 14, 2012 was based upon the complainant's records requests of October 4, 2012 and October 24, 2012.

11. 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.

12. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

13. It is concluded that the requested records are “public records” within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

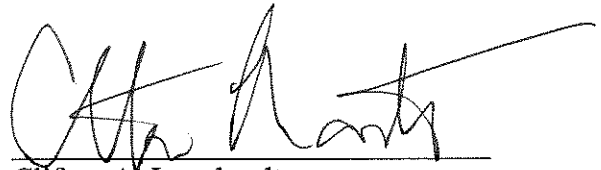
14. It is found that in early January 2013 the respondents provided the complainant access to a substantial body of records within the scope of the complainant's records requests of October 4, 2012 and October 24, 2012.

15. Based upon the sworn testimony of the respondent Director, it is found that the respondents have performed a diligent search and that the respondents do not maintain any records within the scope of the complainant's request other than those provided to her in January 2013.

16. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide copies of requested records which they maintained.

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.

A handwritten signature in black ink, appearing to read "Clifton A. Leonhardt", written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer