



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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PETA,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-681

Director of Health Affairs Policy Planning,
State of Connecticut, University of Connecticut Health Center;
State of Connecticut, University of Connecticut Health Center;
Commissioner, State of Connecticut, Department of
Administrative Services; and State of Connecticut,
Department of Administrative Services,
Respondent(s)

October 28, 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, November 13, 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 November 4, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE November 4, 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 November 4, 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: Gabriel Z. Walters, Esq., Martina Bernstein, Esq.,
Joseph J. Blyskal, Esq.,
Stephen J. Courtney, Esq., Charles H. Walsh, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

People for the Ethical Treatment of
Animals Foundation,

Complainant

against

Docket #FIC 2012-681

Director of Health Affairs Policy Planning,
State of Connecticut, University of
Connecticut Health Center; State of
Connecticut, University of Connecticut
Health Center; Commissioner, State of
Connecticut, Department of
Administrative Services; and State of
Connecticut, Department of
Administrative Services,

Respondents

October 28, 2013

The above-captioned matter was heard as a contested case on May 21, and September 10, 2013, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The Commission denied the complainant's requests for subpoenas to be issued and served on several individuals, two of whom subsequently testified on behalf of the named respondents. On its own behalf, the complainant had served subpoenas on the commissioner of the Department of Administrative Services ("DAS") and the Executive Vice-President of Health Affairs and Dean of the School of Medicine of the University of Connecticut Health Center ("UCHC"). At the conclusion of testimony in the contested case, the complainant withdrew the subpoena for the commissioner of the Department of Administrative Services. The complainant then unsuccessfully sought enforcement in Superior Court of the subpoena against the Executive Vice-President and Dean of UCHC.

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 on October 18, 2012, the complainant requested all correspondence between the respondent UCHC and the National Institutes of Health ("NIH") concerning

potential noncompliance with federal animal welfare guidelines from January 1, 2009 to the present.

3. It is found that on November 13, 2012, the complainant received 61 pages of records responsive to the complainant's request. It is found that the respondent UCHC made 19 redactions to such records.

4. It is found that UCHC provided the redacted records promptly.

5. It is found that of the 19 redactions, three were the names of employees directly involved in animal research. It is found that the balance of the redactions were federal grant numbers, which can be used to learn the names of the investigators and key personnel working on the grants.

6. It is found that on November 26, 2012, UCHC informed the complainant (hereinafter sometimes referred to as "PETA") that the redactions were based on a claim of exemption pursuant to §1-210(b)(19), G.S.

7. By letter filed December 6, 2012, the complainant appealed to this Commission, alleging that the respondent UCHC violated the Freedom of Information ("FOI") Act by failing to provide it with unredacted copies of records.

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, ... 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:

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

10. 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."

11. It is concluded 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.

12. Section 1-210(b)(19), G.S., provides in relevant part, that “[n]othing in the Freedom of Information Act shall be construed to require disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility...

13. Section 1-210(d), G.S., provides:

Whenever a public agency ... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services ... of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act ... If the commissioner, after consultation with the chief executive officer of the applicable agency ... believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency ... that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively...

14. It is found that by letter dated February 6, 2013, and pursuant to §1-210(d), G.S., UCHC notified the commissioner of the Department of Administrative Services (“DAS”) of PETA’s request for records.

15. It is found that UCHC admitted in such letter that it should have contacted DAS “in a timelier manner.”

16. It is found that UCHC did not initially contact DAS because it relied on a directive issued by the commissioner of DAS in response to previous safety risk assessments in 2010 and 2008 that addressed requests by PETA for records some of which are the same and some of which are similar to the records PETA requested in 2012, described in paragraph 2, above.

17. However, §1-210(d), G.S., requires a public agency to “promptly notify” the commissioner of DAS “whenever” the agency receives a request for records described in §1-210(b)(19), G.S.

18. It is found that UCHC failed to promptly notify DAS in this matter.

19. Accordingly, it is concluded that UCHC violated §1-210(d), G.S.

20. It is found that the commissioner of DAS communicated with UCHC's Executive Vice-President for Health Affairs and Dean of the School of Medicine, and consulted with his relevant staff, as §1-210(b)(19), G.S., requires.

21. It is found that in a letter dated March 8, 2013, the commissioner of DAS directed UCHC not to disclose the redacted information based on a determination that he believed there were reasonable grounds to believe that disclosure of such information may create a risk of harm, within the meaning of §1-210(b)(19), G.S.

22. It is found that on March 23, 2013, UCHC provided a copy of such letter to PETA and to this Commission.

23. It is found that on May 1, 2013, PETA filed an amended complaint, adding the commissioner of DAS and DAS as respondents.

24. Almost contemporaneously, the Commission, on May 2, 2013, joined the commissioner of DAS and DAS as respondents to this matter, pursuant to §1-210(d), G.S., and §1-21j-30 (a) of the Regulations of Connecticut State Agencies.¹

25. DAS claims that the complaint against DAS was not timely filed because PETA failed to amend its complaint to add DAS a party within 30 days from when DAS issued its directive not to disclose the redacted information. DAS asserts that the Commission lacks subject matter jurisdiction to adjudicate the underlying matter.

26. Section 1-206(b)(1), G.S., provides, in pertinent part that:

Any person denied the right to inspect or copy records under section 1-210 or denied any other right conferred by the Freedom

¹ §1-21j-30 (a) of the Regulations of Connecticut State Agencies provides:

In issuing the notice of hearing described in section 1-21j-34 of the Regulations of Connecticut State Agencies, the executive director or his or her designee shall designate as a party any person known to the commission whose legal rights, duties or privileges are required by statute to be determined by a commission proceeding and who is required by law to be a party in a commission proceeding, and any person whose participation as a party is then deemed to be necessary to the proper disposition of such proceeding...

of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial...

27. It is found that PETA was denied the right to receive copies of records without redaction on November 13, 2012, when it received the redacted records from UCHC.

28. It is found that PETA's notice of appeal, on December 6, 2012, was timely filed within 30 days of the alleged denial.

29. It is found that §1-210(d), G.S., merely required that DAS be named as the respondent on a claim of exemption pursuant to §1-210(b)(19), G.S. It is concluded nothing in §1-210(d), G.S., required PETA to amend its complaint or to do so within 30 days of receiving notice of DAS's directive.

30. It is concluded that the FOI Commission properly joined DAS as a respondent to this matter and that the Commission has subject matter jurisdiction to adjudicate PETA's appeal.

31. With respect to the claim of exemption pursuant to §1-210(b)(19), G.S., it is found that the commissioner of DAS relied heavily on risk assessments performed by the commissioner of the former Department of Public Works ("DPW")² in 2008 and 2010 concerning requests by PETA, individuals associated with PETA, or another animal rights organization for similar or identical records as those requested by PETA in this matter. It is found that in 2010, the commissioner of DPW detailed numerous incidents nationwide, mostly between 2003 and 2009, of violence, threats of violence and harassment directed at individual researchers, their families, homes and property.

32. It is found that, according to sources relied on by the commissioner of DAS, that in 2008, Connecticut was considered to be a "low-medium incidents state," and New York, New Jersey, Pennsylvania and Washington, DC were considered "high incidents states." It is found that in 1989, an animal rights extremist placed a radio-controlled pipebomb on the premises of U.S. Surgical Corporation in Norwalk, Connecticut, which was successfully disarmed.

33. In addition, in 2008, the president of the University of Connecticut was the recipient of an e-mail campaign demanding that UConn cease using live animals in connection with intubation courses. It is found that six of the thousands of e-mails received in a two-week span advocated physical harm to those who perform animal research.

34. The complainant contends, reasonably, that UCHC disclosed NIH grant numbers to PETA in similar or identical records provided to PETA in 2010, and that even though PETA could use the numbers to identify the principal investigators and other researchers, no harm resulted to any person referenced in the records disclosed to PETA. The complainant also

² The former DPW was the predecessor agency to DAS for purposes of determinations pursuant to §1-210(b)(19), G.S.

contends that the respondents failed to provide any evidence of harm or threat of harm due to disclosure of the names of animal researchers who violated treatment protocols. The complainant contends, therefore, that there is no nexus between disclosure of the names and grant numbers and the risk of harm described by the respondents.

35. The complainant also observes that DAS relied on a safety review performed in 2008 and 2010, and that the respondents failed to provide evidence of any significant harm or threat of harm to animal researchers since 2009. In essence, PETA claims that the evidence that DAS used to support its claim of exemption is stale and not descriptive of the state of affairs in 2013.

36. The respondents contend that the decline of the number and severity of incidents of violence against animal researchers since 2010 may be due to new legislation targeting such attacks, the use of the courts, and increased vigilance by law enforcement. The respondents suggest, also, that the lack of incidents may be the result of successful deterrence, rather than, as PETA suggests, the absence of threat.

37. It is concluded that §1-210(b)(19), G.S., requires the commissioner of DAS to prove that there are reasonable grounds for his belief that disclosure of names and grant numbers may create a safety risk. "The FOIC's role is to determine whether the [commissioner's] reasons were pretextual and not bona fide, or irrational." Commissioner, Department of Correction v. FOI Commission, Superior Court, judicial district of New Britain at New Britain, Docket No. CV074015438 and CV084016766 (November 3, 2008) (2008 Conn. Super. 2724) *13.

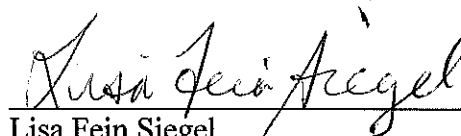
38. It is found that DAS's reasons were not irrational, and that the commissioner of DAS acted in good faith and without pretext in believing that disclosure of the redacted information may result in a risk of harm.

39. It is found, therefore, that the commissioner of DAS has reasonable grounds to believe that disclosure of the names and grant numbers of researchers reported for failing to comply with animal welfare guidelines may create a safety risk, including a risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, within the meaning of §1-210(b)(19), G.S.

40. It is concluded, accordingly, that DAS did not violate §1-210(d), G.S., by directing UCHC not to disclose the names and NIH grant numbers from the records requested by PETA.

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

1. Henceforth, UCHC shall comply with the promptness requirements of §1-210(d), G.S.
2. The complaint against the commissioner of DAS and against DAS is dismissed.



Lisa Fein Siegel
as Hearing Officer

FIC2012-681/HOR/LFS/10282013