

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

David Godbout,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-183

Andres Ayala, Member, State of Connecticut,
Connecticut State Senate; and Joan Hartley,
Member, State of Connecticut, Connecticut
State Senate,
Respondent(s)

February 11, 2014

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, March 12, 2014**. 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 February 28, 2014**. 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 February 28, 2014**. **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 February 28, 2014**, 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: David Godbout
Philip Miller, AAG

2/11/2014/FIC# 2013-183/Trans/wrbp/LFS//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2013-183

Andres Ayala, Member, State of
Connecticut, Connecticut State Senate; and
Joan Hartley, Member, State of
Connecticut, Connecticut State Senate,

Respondents

February 11, 2014

The above-captioned matter was heard as a contested case on February 4, 2014, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC 2013-184; David Godbout v. Executive Director, State of Connecticut, Office of Legislative Management; and State of Connecticut, Office of Legislative Management; and Docket #FIC 2013-194; David Godbout v. Anthony Guglielmo and Kevin Witkos, as Members, State of Connecticut, Connecticut State Senate.

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 March 8, 2013, the complainant requested a) records related to Senate Bill 1076, from December 1, 2012 through the date of the request; and b) internet browsing histories from December 1, 2012 through the date of the request.
3. It is found that the respondents or their aides searched their computers and that of the respondent legislators for records using the search term "1076." It is found that the respondents or their aides also searched their paper records using the same term.
4. It is found that the search produced responsive records, consisting mostly of correspondence from members of the public to the legislators concerning the senate bill, which concerned gun violence.
5. It is found that the respondents redacted the e-mail addresses, town names and zip codes of the people who sent the correspondence to the legislators, and provided the remainder

of the responsive records, including the names of the authors of the correspondence, to the complainant in a pdf file on March 26, 2013.

6. By letter filed March 28, 2013, the complainant appealed to this Commission, alleging that the respondent violated the Freedom of Information (“FOI”) Act by improperly redacting records and by failing to provide internet browser histories.

7. 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.
(Emphasis added.)

8. 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, (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.

9. 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.”

10. 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., except as set forth below.

11. The respondents cite Advisory Opinion #90 in support of their redaction of constituents’ e-mail addresses, town names, and zip codes, and claim such information is not a public record within the meaning of §1-200(5), G.S.

12. Advisory Opinion #90 suggests the extent to which the FOI Act applies to correspondence from constituents sent to members of the General Assembly. It concludes that correspondence received by a legislator that relates directly or indirectly to enacting legislation or making laws constitutes information relating to the public’s business and, therefore, falls within the definition of a public record. The Opinion concludes, conversely, that correspondence relating to personal matters does not relate to legislation or law-making, and therefore does not constitute a public record.

13. The respondents claim that the e-mail addresses, town names, and zip codes of the people writing to the respondents are not public records pursuant to §1-200(5), G.S., because such information is not related to enacting legislation or making laws. The respondents also assert that disclosing the e-mail addresses, town names, and zip codes would have a chilling effect on citizens' right to communicate freely with elected officials, because people would be reluctant to contact their officials if doing so would subject them to inquiry from members of the public regarding their communication.

14. It is found that the town and zip code of a person who sent a letter to the respondents concerning a pending piece of legislation does relate to enacting legislation or making laws, because it reveals whether such person is a constituent of a given legislator.

15. It is also found that the authors intentionally and voluntarily provided their towns and zip codes, and that such information is widely available elsewhere.

16. It is found that the town and zip code on the correspondence at issue in this matter is a public record within the meaning of §1-200(5), G.S.

17. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by redacting the town names and zip codes on the records provided to the complainant.

18. With respect to the e-mail addresses of the people who sent the correspondence, it is found that such addresses do not reveal whether the author is a constituent of a particular legislator, or even whether the author is a resident of Connecticut. Moreover, it is found that such information is not provided intentionally and voluntarily, but instead appears automatically upon sending an e-mail. It is also found that personal e-mail addresses are not widely available elsewhere.

19. It is found that under the circumstances of this case and in light of the unique relationship between constituent and legislator in which the legislator served a dual role as both constituent services provider and lawmaker, the e-mail addresses of the authors of the correspondence at issue in this matter is information that does not relate to the public's business. It is found that such information is not a public record.

20. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by redacting such records.

21. With respect to the request for internet browser histories, it is found that the respondents requested advice from their IT Services, which informed the respondents that browser histories are not backed up and, therefore, not retained.

22. It is found that the respondents subsequently learned that browser histories can be set to be retained on individual computers. It is found that the respondents searched the computers of the named legislators and their aides, but discovered that no browser histories were retained.

23. At the hearing in this matter, the complainant suggested that the web browsing histories may be retained on a dat file. The respondents indicated that they would investigate whether the browsing histories could be accessed in the manner suggested by the complainant.

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 investigate whether web browsing histories for the period requested by the complainant are available on the respondents' computers in a dat file. The respondents shall provide the complainant and the Commission with an affidavit prepared by a person with technical knowledge of the search, describing the nature of the search and its results.

2. If the respondents discover web browser histories that are responsive to the complainant's request, they shall provide such records to the complainant.

3. The respondents shall disclose the town and zip code on the records provided to the complainant.


Lisa Fein Siegel
as Hearing Officer