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# 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

Michael Anania,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-562

Chief Audit and Compliance Officer, Office of Audit, Compliance & Ethics, State of Connecticut, University of Connecticut; Office of Audit, Compliance & Ethics, State of Connecticut, University of Connecticut; Chief, Police Department, State of Connecticut, University of Connecticut; Police Department, State of Connecticut, University of Connecticut; and State of Connecticut, University of Connecticut,  
Respondent(s)

May 7, 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, May 28, 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 May 14, 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 May 14, 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 May 14, 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: Joseph Sastre, Esq.  
Holly J. Bray, AAG

2014-05-07/FIC# 2013-562/Trans/wrbp/CAL//LFS

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

Michael Anania,

Complainant

against

Docket # FIC 2013-562

Chief Audit and Compliance Officer,  
Office of Audit, Compliance & Ethics,  
State of Connecticut, University of  
Connecticut; Office of Audit,  
Compliance & Ethics, State of  
Connecticut, University of Connecticut;  
Chief, Police Department, State of  
Connecticut, University of Connecticut;  
Police Department, State of Connecticut,  
University of Connecticut; and State of  
Connecticut, University of Connecticut,

Respondents

May 2, 2014

The above captioned matter was heard as a contested case on April 24, 2014, 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 July 23, 2013, counsel for the complainant, attorney Joseph Sastre, made a request to the respondents for copies of two categories of records:
  - a.) The “standards and procedures by which a person may be banned from the University campus by the University Police”; and
  - b.) “your file, numbered 13-29451” (together, sometimes the “requested records”).
3. It is found that, by letter dated July 26, 2013, Ms. Liz Vitullo of the respondent Office of Audit, Compliance & Ethics acknowledged the complainant’s request. By letter dated August 2, 2013, Michael Eagen, Director, Office of Faculty and Staff Labor Relations, at the respondent University, also confirmed that the request for records had

been referred to the respondent Office of Audit, Compliance & Ethics. Additionally, Mr. Eagen stated that “any further questions” concerning the records request should be directed to Rachel Krinsky Rudnick and provided her business telephone number.

4. It is found that, by email dated September 11, 2013, attorney Sastre transmitted his own letter to attorney Rudnick describing an August 22, 2013 telephone conversation with Ms. Vitullo and noting that he had not received a substantive response in “more than forty five days....” Also on September 11, 2013, Ms. Vitullo responded by email to attorney Sastre, and, by another email, he rejoined.

5. At the hearing, attorney Rudnick testified and it is found that she intervened with her own email dated September 11, 2013 in order to arrest an escalation of conflict. Attorney Rudnick’s email informed attorney Sastre that the requested records had been collected from other departments of the respondent University and “should be available for release...by the end of the week.”

6. It is found that, by letter dated and transmitted by email on September 17, 2013, Ms. Vitullo forwarded a set of records to attorney Sastre which included the file numbered 13-29451, with redactions of student names. At the hearing, there was conflicting testimony as to whether the September 17, 2013 letter also had attachments responding to the records request described at paragraph 2.a.). But in any case, it is found that these records were also provided to attorney Sastre within “a couple of days” of September 17, 2013.

7. It is also found that, by reply email to Ms. Vitullo dated September 17, 2013, attorney Sastre noted that the police report that he received stated that printouts of the complainant’s records check were attached, but that no such printouts were included in the records that attorney Sastre was provided.

8. It is further found that, by email dated September 18, 2013, attorney Rudnick reported to Captain Vargas of the respondent Police Department on the status of her inquiries to the State Police concerning the disclosure of records from the COLLECT database. By email the same afternoon, also dated September 18, 2013, attorney Janet Ainsworth of DESPP forwarded to attorney Rudnick the “[E]l [B]adrawi case” [See paragraph 16 below for holding of Commissioner of Correction v. FOIC; United States of America v. FOIC, 307 Conn. 53, 52 A.3d 636 (2012)].

9. It is found that, by letter dated September 18, 2013 and filed with the Commission on September 19, 2013, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act (“FOIA”).

10. 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.

11. 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.

12. 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.

13. By the April 24, 2014 hearing, two issues remained contested: a) whether the respondents provided all records subject to mandatory disclosure within their file numbered 13-29451; and b) the promptness of the records production.

14. Concerning the question of whether the respondents provided all records subject to mandatory disclosure within the file numbered 13-29451, it is found that the respondents disclosed all records to attorney Sastre, except, as respondents have acknowledged, the “printouts of [Mr. Anania’s] records check”.

15. It is found that, by email dated September 19, 2013, from attorney Rudnick to attorney Sastre, respondents explained that the “printouts of [Mr. Anania’s] records check” consisted of four records “from the Connecticut Online Law Enforcement Communication Teleprocessing System (COLLECT System), which is part of the National Crime Information Center database (NCIC).” As such, attorney Rudnick claimed that the “printouts of [Mr. Anania’s] records check” were exempt from disclosure. Based on exhibits in the record and sworn testimony, it is found that the “printouts of [Mr. Anania’s] records check” were obtained from the National Crime Information Center (NCIC) computerized database.

16. It is concluded that the “printouts of [Mr. Anania’s] records check”, as records obtained from the National Crime Information Center (NCIC) computerized database, are exempt from mandatory disclosure pursuant to §29-164f, G.S., as well as 42 U.S.C. §14616. Commissioner of Public Safety v. FOIC, 144 Conn. App. 821, 76 A.3d 185 (2013); see also Commissioner of Correction v. FOIC; United States of America v. FOIC, 307 Conn. 53, 52 A.3d 636 (2012).

17. Concerning the alleged “promptness” violation, it is found that FOIA requests to the four person respondent Office of Audit, Compliance & Ethics increased from 225 requests in 2012 to 302 requests during 2013. Within the calendar year 2013, there were 119 requests during the months of May, June, July and August (nearly 40% of the annual total in one third of the year). During the month of the complainant’s request alone, July 2013, there were forty requests (13% of the annual total during 8% of the year).

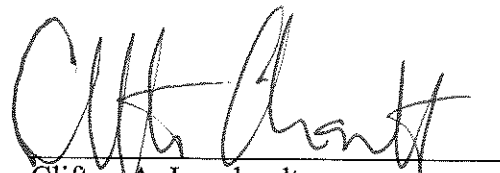
18. It is also found that in July 2013 attorney Sastre did not indicate that any extraordinary urgency was attached to his request. (At the hearing, attorney Sastre explained that, when he had made previous FOIA requests, he had usually obtained the relevant records within about thirty days.) Nor, pursuant to the August 2, 2013 instruction from Michael Eagen, did attorney Sastre contact attorney Rudnick directly, until his emailed letter of September 11, 2013. Moreover, after receiving attorney Sastre’s September 11, 2013 letter, attorney Rudnick gave the matter considerable personal attention, researching the relevant exemption as well as explaining her office’s procedures and the exemption claimed.

19. It is concluded that the response of the respondent Office of Audit, Compliance & Ethics was somewhat belated during the “dead of summer” and immediately afterwards. But based on all the facts and circumstances of this case, it is also concluded that the respondents did not violate the legal requirement to provide the requested records promptly.

20. It is finally concluded that the respondents did not violate §§1-210(a) and 212(a), G.S., as alleged.

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.

  
Clifton A. Leonhardt  
as Hearing Officer