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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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Fernando Lage,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-127

Director, Department of Parks, Recreation and Trees, City  
of New Haven; Department of Parks, Recreation and  
Trees, City of New Haven; and City of New Haven,  
Respondent(s)

December 12, 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, January 14, 2015**. 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 January 2, 2015**. 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 January 2, 2015**. **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 January 2, 2015**, 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: Fernando Lage  
Kathleen Foster, Esq.

2014-12-12/FIC# 2014-127/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Fernando Lage,

Complainant

against

Docket #FIC 2014-127

Director, Department of Parks,  
Recreation and Trees, City of New  
Haven; Department of Parks, Recreation  
And Trees, City of New Haven; and  
City of New Haven,

Respondents

December 11, 2014

The above-captioned matter was heard as a contested case on October 23, 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), G.S.
2. It is found that, by email dated January 31, 2014, the complainant requested from the respondents copies of all emails sent and received between the parks department director and the deputy director during November and December of 2013,<sup>1</sup> and all emails “between parks and human resources within that time frame.”
3. It is found that, by email dated January 31, 2014, the respondents acknowledged the request, described in paragraph 2, above, and requested that the complainant specify the names of those individuals in human resources whose emails he was seeking.
4. It is found that, by email dated February 1, 2014, the complainant provided to the respondents the names of three individuals in human resources whose emails he was seeking, and also expanded his request to include all emails sent and received by the director and deputy director during November and December 2012.

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<sup>1</sup> The complainant later informed the respondents that the reference to 2013 should have been 2012.

5. It is found that, by email dated February 27, 2014, the complainant inquired of the respondents as to the status of his request, described in paragraphs 2 and 4, above.

6. By email dated and filed March 4, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the request for records, described in paragraphs 2 and 4, above.

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, 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.

8. 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 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 that “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

10. It is found that the records responsive to the requests, described in paragraphs 2 and 4, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that, in response to the requests, described in paragraphs 2 and 4, above, a paralegal in the office of Corporation Counsel for the respondent City of New Haven (“city”) forwarded such requests to the city’s network administrator (“administrator”), and that the administrator conducted a search for responsive records on the city’s servers. It is found that on the city’s computer network, each user is assigned a “mailbox” in which all emails, that have not been deleted, are stored. It is further found that the process by which a search for emails is conducted on the city’s system requires that each user’s mailbox be searched with certain filters, as appropriate. It is found that, in this case, the mailboxes of the names of the five individuals were searched using the “to” and “from” filter, and the date filter. It is found that the results of the search conducted by the administrator in this case consisted of every email sent or received

by each of the five named individuals, in November and December of 2012, including all emails on which any of the five individuals were "cc'd," totaling approximately 7,000 emails. It is further found, that such results did not include any emails that may have been deleted.

12. It is found that the administrator sent the results of the search to the paralegal, in PDF form, in two separate batches. It is found that in June and July, 2014, the respondents provided the complainant with the opportunity to review the 7,000 emails (with the exception of some attachments to certain emails that the respondents claimed were attorney-client privileged<sup>2</sup>), so that he could decide which emails he wanted copied. It is found that the complainant indicated that he wanted copies of approximately 45 pages of emails.

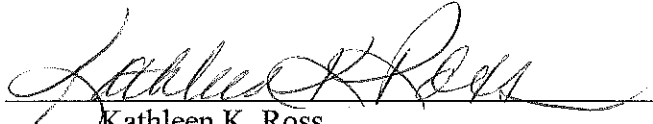
13. It is found that, a few days later, the complainant contacted the respondents again and informed them that he believed certain emails existed but were not provided to him. It is found that he showed the paralegal copies of certain emails that he had obtained through other sources that had not been provided to him that were within the scope of his request. It is found that the paralegal then contacted the administrator with this information and requested that the administrator conduct an additional search for responsive emails. It is found that the administrator conducted such search, and that no additional emails were located. The administrator testified, and it is found, that if responsive emails were not located through the search, it is most likely because such emails were deleted at some point during the past couple of years. It is further found that, because the city's email system is outdated, deleted emails cannot be recovered.

14. At the hearing in this matter, the sole issue raised by the complainant was whether or not the respondents had provided him with all responsive records. Based upon all of the foregoing findings of fact, it is found that the respondents provided the complainant with all records they maintain that are responsive to his request, described in paragraphs 2 and 4, above.

15. Accordingly, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.



Kathleen K. Ross  
as Hearing Officer

FIC 2014-127/hor/kkr/12112014

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<sup>2</sup> The complainant does not contest this claim.