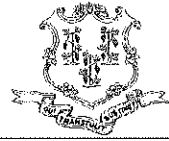




FREEDOM OF INFORMATION



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 Aronow,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-156

Executive Vice President, State of Connecticut, University
of Connecticut Health Center; and State of Connecticut,
University of Connecticut Health Center,
Respondent(s)

January 2, 2015

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 28, 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 14, 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 14, 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 14, 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: Michael Aronow
Jeffrey M. Blumenthal, Assistant Attorney General

2015-01-02/FIC# 2014-156/Trans/wrbp/CAL//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Michael Aronow,

Complainant

against

Docket #FIC 2014-156

Executive Vice President, State of Connecticut,
University of Connecticut Health Center; and
State of Connecticut, University of Connecticut
Health Center,

Respondents

December 29, 2014

The above-captioned matter was consolidated for hearing with Docket #FIC 2014-157; also captioned Michael Aronow v. Executive Vice President, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center. Both matters were heard as contested cases on December 16, 2014, at which time the complainant and the respondents herein appeared, stipulated to certain facts 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 August 19, 2013, the complainant made a revised request to the respondents for copies of all emails sent or received by Dr. Jay R. Lieberman during a certain time period and all Microsoft word and PDF documents on Dr. Lieberman's computers at the respondent Health Center during another stated time period. The complainant also requested a list of records that were excluded from disclosure.
2. It is found that, by email dated August 19, 2013, the respondents acknowledged the complainant's request.

3. It is found that, by email dated December 13, 2013, Dr. Scott Wetstone of the respondent Health Center suggested to the complainant that, in light of the complainant's other FOIA requests, a narrowed request would expedite disclosure. By email dated December 16, 2013, the complainant agreed to exclude a few categories of records from the scope of his request. The complainant also testified and it is found that, following this email exchange in December 2013, there was no further activity concerning his August 19, 2013 records request until he filed his complaint.

4. By notice of appeal dated and filed March 17, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act by denying his request for the records. Generally consistent with the finding in paragraph 3, above, but differing on the exact day in December 2013, the complaint included a sentence stating: "I have also not received any correspondence related to my request since December 19, 2013."

5. Section 1-206, G.S., provides in relevant part:

(a) Any denial of the right to inspect or copy records ... shall be made to the person requesting such right ... in writing, within four business days of such request.... Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom 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 ... (emphasis added)

6. By letter dated June 5, 2014, the Commission notified the complainant that his correspondence received on March 17, 2014, described in paragraph 4, above, would not be scheduled for a hearing because the complainant had not filed his complaint within thirty days of the alleged violation pursuant to §1-206, G.S. The Commission also informed the complainant that no further action would be taken on the complaint at that time. However, if he nevertheless wished to pursue his complaint, the Commission requested that the complainant provide a written response within two weeks' time.

7. Subsequently, by email dated June 12, 2014, the complainant submitted a response to the Commission's June 5, 2014 correspondence, described in paragraph 6, above. The June 12, 2014 email stated that Dr. Scott Wetstone had not responded to the complainant's inquiries since December 13, 2013. It also included the contradictory statement: "This March 17, 2014 complaint listed the date of the violation as March 17,

2014, which is within 30 days of the alleged violation.” However, the June 12, 2014 email does not contain specific information regarding whether the complainant was denied access to records within thirty days prior to the filing of his complaint.

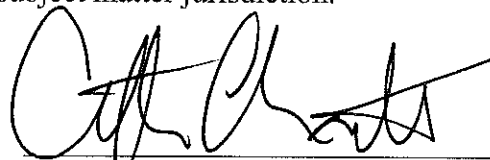
8. The Commission has consistently held over many years that a complaint must be filed within thirty days of a denial deemed by statute. Docket #FIC 2012-538, Lee Smith v. Superintendent of Schools, Middletown Public Schools; and Middletown Public Schools; Docket #FIC 2012-538, Ismael Hernandez III v. Chief, Fire Department, City of Bridgeport. See also, in the context of an alleged meetings violation, Docket #FIC 1995-416, Gwen Fremlin v. Kathy Neth, Ellen Berk, John Lavagnino, Francine Leniston, Jerry Ryan, Edward Asvazadourian, Robert Maloney, Don Torre, Cindy Taylor, Linda Shine-Wise, and Candlewood Isle Tax District Board of Directors. Moreover, the Courts have recognized the importance of statutory denial. Sedensky v Freedom of Information Commission, HHB 136022849S, Superior Court, Judicial District of New Britain, November 25, 2013, p. 8; Gallagher v. Freedom of Information Commission, CV 93 053 15 14, December 5, 1994, p. 6.

9. It is concluded that the filing of the complaint on March 17, 2014 was more than sixty days past the denial of the complainant’s request that is deemed to have occurred on December 20, 2013, four business days following the complainant’s December 16, 2013 renewed request.

10. It is therefore concluded that the complaint was not timely filed within the time required to confer jurisdiction on the Commission pursuant to §1-206, G.S.

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 for lack of subject matter jurisdiction.



Clifton A. Leonhardt
as Hearing Officer