



# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-028

Commissioner, State of Connecticut,  
Department of Rehabilitation Services; and  
State of Connecticut, Department of  
Rehabilitation Services,  
Respondent(s)

August 26, 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 Thursday, September 24, 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 September 11, 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 September 11, 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 **fifteen (15) copies** be filed **ON OR BEFORE September 11, 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: Marie Geelan  
Antony A. Casagrande, Esq.

2015-08-26/FIC# 2015-028/Trans/wrbp/CPH/VB/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Marie Geelan,

Complainant

against

Docket #FIC 2015-028

Commissioner, State of Connecticut,  
Department of Rehabilitation Services;  
and State of Connecticut, Department of  
Rehabilitation Services,

Respondents

June 29, 2015

The above-captioned matter was heard as a contested case on June 15, 2015, at which time the complainant and respondents 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, on January 7, 2015, the complainant made a written request to the respondents for the "performance evaluations" for Lauren McAulay, a current employee with the respondent, Department of Rehabilitation Services ("DORS"), and Sandra Wright, a former employee with the Bureau of Rehabilitation Services ("BRS").
3. It is found that, by e-mail dated January 8, 2015, the respondents' counsel initially informed the complainant that her request was denied based on the §1-210(b)(2), G.S., exemption for "personnel or medical files and similar files the disclosure of which would constitute an invasion of personal privacy."
4. By letter filed on January 12, 2015, the complainant appealed to this Commission, alleging that the respondents failed to provide copies of certain records referenced in paragraph 2, above, in violation of the Freedom of Information Act.

5. At the hearing in this matter, the complainant indicated that the only records at issue in this appeal were the performance evaluations for Sandra Wright. The complainant's request for the performance evaluations for Lauren McAulay was abandoned.<sup>1</sup>

6. Section 1-200(5), G.S., defines "public records or files" as:

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.

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

8. 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."

9. It is found that, to the extent the performance evaluations for Ms. Wright exist, such records are public records within the meaning of §1-210(a), G.S., and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. At the hearing in this matter, the complainant contended that the respondents purposefully withheld the requested records.

11. It is found that, on March 12, 2015, the respondents notified Ms. Wright of the complainant's request and afforded her the opportunity to object to disclosure of her performance evaluations.

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<sup>1</sup>The complainant asserted at the hearing that she also made a request to the respondents for the resumes of Ms. Wright and Ms. McAulay, which she claims were not provided. However, the complainant did not include the alleged denial of those specific records in the instant appeal.

12. It is found that, by letter dated March 26, 2015, the respondents updated their response to the complainant and informed her that certain records, including the requested performance evaluations for Ms. Wright, were not in their possession. Therefore, the respondents asserted that the requested records could not be provided.

13. At the hearing in this matter, the respondents did not claim any exemption to disclosure. Rather, the respondents reiterated their position set forth in the March 26, 2015 letter that the requested records were not in their possession. However, the Commission takes this opportunity to remind the parties of In Personnel Director, Department of Income Maintenance v. FOIC, 214 Conn. 312, 320-21 (1990), in which our Supreme Court held that §5-237, G.S., limits access to a classified employee's service rating to the employee who is subject of such rating. See also Kevin Daly, Jr. and the City of Waterbury v. Commissioner, State of Connecticut, Department of Correction, et. al., Docket #FIC 2014-032.

14. The respondents' witness, a human resource manager with DORS, testified, and it is found, that following their initial January 8, 2015 response to the complainant, the respondents searched for the records at issue and made a good faith determination that no such records were in their possession.

15. In support of their assertion that the requested records were not in their possession, the respondents' witness testified, and it is found, that the formation of DORS resulted from a 2012 reorganization that merged several existing state commissions and bureaus, including BRS. BRS was previously a part of the Department of Social Services ("DSS"). The witness testified, and it is found that Ms. Wright was employed by BRS and was terminated prior to that reorganization. The witness further testified, and it is found, that in 2013, DORS took over the management of personnel records of all active employees from BRS and created personnel records unique to DORS, and that personnel records of terminated employees from BRS were not maintained by DORS. The witness opined that personnel records of former BRS employees are in the possession of DSS.

16. Based upon the testimonial evidence in this matter, it is found that the respondents do not maintain or keep on file the requested records.

17. With regard to the complainant's allegation that the respondents purposefully withheld the requested records, it is found that there is no credible evidence in the record to support such a speculative allegation.

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

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.

A handwritten signature in black ink, appearing to read "C P Hankins", written in a cursive style.

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Commissioner Christopher P. Hankins  
as Hearing Officer