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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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Joseph R. Sastre,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-123

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

September 25, 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, October 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 September 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 September 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 **fifteen (15) copies** be filed **ON OR BEFORE September 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: Joseph R. Sastre
Holly Jean Bray, Esq.

2015-09-25/FIC# 2015-123/Trans/wrbp/MES/VB/LFS

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Joseph R. Sastre,

Complainant

against

Docket #FIC 2015-123

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

August 12, 2015

Respondents

The above-captioned matter was heard as a contested case on June 30, 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 December 10, 2014, the complainant made a written request to the respondents for certain records related to a University of Connecticut ("UCONN") police officer's testimony in a previous matter before the Commission in Docket #FIC 2014-291, Joseph Sastre v. Chief Audit and Compliance Officer, State of Connecticut, University of Connecticut, Office of Audit, Compliance and Ethics; and State of Connecticut, University of Connecticut, Office of Audit, Compliance and Ethics (hereinafter "Docket #FIC 2014-291"), concerning a deleted voice recording and Freedom of Information training, which included the records regarding the following circumstances:

a) Notification to Captain Sleeman of a request for the voice recording of the October 2, 2013 Notice of Trespass hearing of Michael Anania;

- b) Captain Sleeman's attendance at a Freedom of Information Commission training session and the subject of those training sessions;
- c) The disclosure of the reason for the FOIA Commission training sessions;
- d) Captain Sleeman recounting having destroyed the voice recording of the October 2, 2013 Notice of Trespass appeal hearing as well as any record of steps taken to, cite, reprimand or retrain him for the same action from his personnel file; and
- e) The adoption of standard practices for appeals of Notices of Trespass by the UConn's Police Department.

3. It is found that, by letter dated December 10, 2014, the respondents' acknowledged receipt of the complainant's request and informed him that respondents would begin compiling any responsive records.

4. It is found that, by e-mail dated February 9, 2015, the complainant inquired about the status of his December 10, 2014 request.

5. It is found that, by e-mail dated February 13, 2015, the respondents provided responsive records, which were the respondents' standard operating procedures regarding incidents of trespass as described in paragraph 2(e) above and stated that the requested records described in paragraphs 2(a) and 2(b) did not exist, and that the requested records described in paragraphs 2(c) and 2(d) were not in their possession.

6. By letter dated February 13, 2015 and filed on February 17, 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.

7. 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.

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 . . . (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, to the extent any records related to the UConn police officer’s testimony in Docket #FIC 2014-291 concerning a deleted voice recording and Freedom of Information training exist, as described in paragraph 2 above, 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.

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

12. At the hearing in this matter, the respondents reiterated their position set forth in the February 13, 2015 letter, that aside from the standard operating procedures regarding incidents of trespass, the remaining requested records either do not exist or are not in their possession.

13. In support of their assertion that the remaining requested records do not exist and/or are not in their possession, the respondents’ witness, a compliance and public information specialist with the Office of Audit Compliance and Ethics, testified, and it is found, that upon receiving the complainant’s request for records, she conducted a thorough search of her e-mails and files for responsive records, spoke to Captain Sleeman about the existence of responsive records and also spoke to the UConn police department and determined that the requested records did not exist and/or were not in the respondents’ possession.

14. It is found that respondents searched for the records at issue, provided responsive records in their possession and made a good faith determination that certain records did not exist and the remaining records were not in their possession.

15. The complainant encourages the Commission to impose a civil penalty on the respondents based on his assertion that the requested documents were withheld. However, such

a measure would only be considered if the respondents were found to have violated the Freedom of Information Act.¹ No such finding is made.

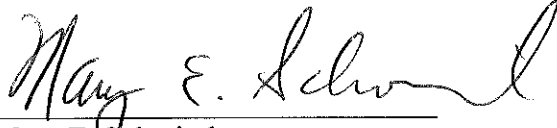
16. With regard to the complainant's allegation that the respondents purposefully withheld the requested records, it is found that there is no credible evidence in the record to support such a speculative allegation.

17. Based upon the testimonial evidence in this matter, it is found that the requested records that were not provided to the complainant either do not exist or are not in the possession of the respondents.

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.



Mary E. Schwind
as Hearing Officer

FIC/2015-123/MES/vb/08/12/2015

¹As requested by the Complainant, the Commission takes administrative notice of its decision in Docket #FIC 2014-291 and the recording of the hearing that took place in that matter. However, the Commission notes that neither the hearing nor its decision in that matter in any way advances the complainant's argument in the instant appeal.