



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-127

Freedom of Information Officer, State of Connecticut,
University of Connecticut Health Center; and State of
Connecticut, University of Connecticut Health Center,
Respondent(s)

October 1, 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 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 October 16, 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 October 16, 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 October 16, 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

2015-10-01/FIC# 2015-127/Trans/wrbp/LFS//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 2015-127

Freedom of Information Officer, State of
Connecticut, University of Connecticut
Health Center; and State of Connecticut,
University of Connecticut Health Center,

Respondents

September 14, 2015

The above-captioned matter was heard as a contested case on July 1, 2015, at which time the complainants and the 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 February 4, 2015, the complainant requested the following:
 - a. All emails received or sent by Dr. Jay R. Lieberman on his UCHC email account(s) from July 1, 2009 to the present;
 - b. All Microsoft Word and PDF documents on Dr. Jay R. Lieberman's UCHC computer(s) created or modified from July 1, 2010 to the present; and
 - c. A list of all emails and documents that you have obtained related to the above requests but were excluded and the reason they were excluded.
3. By letter filed February 17, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records they requested.

4. 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. Section 1-210(a), G.S., provides, in relevant part:

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.

6. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. It is found that all the records requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the complainant's request, set forth in paragraph 2, above, is identical to a request he made to the respondents on August 19, 2013, and was the subject of the complainant's appeal to the Commission alleging failure to comply promptly. It is found that such appeal was dismissed for lack of subject matter jurisdiction (timeliness) on February 4, 2015. See Docket #FIC2014-156; Michael Aronow v. Executive Vice President, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center (February 4, 2015).¹

9. The Commission takes administrative notice of the findings of fact in Docket #FIC2014-156, as the complainant, respondents, request for records, and allegation of lack of promptness are the same in both this case and Docket #FIC2014-156.

10. In particular, the Commission found in Docket #FIC2014-156 that "by email dated December 13, 2013, Dr. Scott Wetstone ('Wetstone') of the respondent Health Center, suggested to the complainant that, in light of the complainant's other FOIA requests, a narrowed request

¹ The complainant took an administrative appeal to the Superior Court, which dismissed the case on a finding that the matter was moot because the complainant had already again made the identical request and appealed the respondents' allegedly untimely compliance to the Commission – such appeal to the Commission is the present matter. Michael Aronow v. FOI Commission, CV15-5016347S, Hartford-New Britain, J.D. (Schuman, J.) June 18, 2015.

would expedite disclosure [of the records requested on August 19, 2013].” Consequently, the complainant agreed to exclude “broadcast emails, journal articles, and research data.” Docket #FIC 2014-156, paragraph 4.

11. It is found that on June 30, 2014, the complainant asked Wetstone to release “whatever material you have collected to date as well as the subset of documents that meet the following search criteria ... between July 1, 2010 and August 14, 2012.” It is found that the complainant listed as search criteria his name and variations of his name, the words FOI and variations, and “HCAC, or “grievance” or “Appeals Committee,” and also excluded emails sent to his own email at the health center.

12. It is found that on July 25, 2014, Wetstone informed the complainant that he had found 191 responsive records, 52 of which required further study for redaction, and that he sent the other 139 records to the complainant by dropbox in partial compliance with the first request.

13. It is found that the transmission by dropbox did not work, and the complainant received only 17 readable records, whereupon he asked Wetstone to send the remaining ones by CD or email.

14. It is found that the complainant still has not received the remaining 122 initial non-redacted records that the respondents were prepared to provide on July 25, 2014 (see paragraph 13, above), and that are responsive to the identical request in this matter.

15. The respondents contend that since leaving the employ of University of Connecticut Health Center three years ago, “Dr. Aronow has filed 27 FOI requests, a number quickly dwarfed by their breadth and complexity.” Moreover, the respondents contend, the complainant’s “FOI requests overlap or mirror his OPH [Office of Public Hearings] discovery.” Respondents’ Memorandum of Law (July 31, 2015), pages 2-3.

16. The respondents testified, through affidavit, that a forensic search of Dr. Lieberman’s computer for documents in Word, Excel, Powerpoint and Adobe PDF, as well as emails, from January 1, 2009 through the search date of September 15, 2013, produced 47,300 documents. The respondents testified further, through affidavit, that based on the file size of the documents and emails, the 47,300 documents contain 824,500 pages.

17. It is found that the estimate of 824,500 pages did not take into account the narrower request described in paragraphs 10 and 11, above. It is found that the respondents and complainant did not discuss narrowing the request in this matter; at the hearing, however, the complainant stated that he intended the search be confined to the terms suggested as the parties discussed in December 2014 concerning the identical August 2013 request.

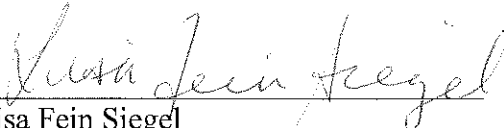
18. Based at least on the 122 records that respondents were prepared to provide to the complainant on July 25, 2014, in partial compliance with the first request, it is found that the respondents have failed to promptly provide the comply with the complainant’s request in this matter.

19. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

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

1. Forthwith the respondents shall promptly comply with the complainant's request, narrowed as described in paragraphs 10 and 11 of the findings of fact, above. Specifically, the respondents shall make a good faith effort to provide the complainant with responsive records on a rolling basis, and shall work diligently to comply fully within nine months of the final decision in this matter. The Commission suggests that the complainant refrain from further requests for records until this request is satisfied.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.


Lisa Fein Siegel
as Hearing Officer