



# 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 2015-171

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

November 9, 2015

## Transmittal of Proposed Final Decision

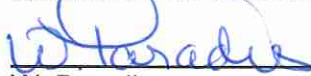
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, December 16, 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 December 4, 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 December 4, 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 December 4, 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

  
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W. Paradis  
Acting Clerk of the Commission

Notice to: Michael Aronow  
Jeffrey M. Blumenthal, AAG

2015-11-09/FIC# 2015-171/Trans/wrbp/PSP/TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Michael Aronow,

Complainant

Docket # FIC 2015-171

against

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

Respondents

November 2, 2015

The above-captioned matter was heard as a contested case on August 3, 2015, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above-captioned matter was consolidated with Docket # FIC 2015-170, Michael Aronow v. Freedom of Information Officer, State of Connecticut, University of Connecticut Health Center; and State of Connecticut, University of Connecticut Health Center.

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 December 23, 2013, the complainant made a nine part request to the respondent Freedom of Information (“FOI”) Officer to review certain records. It is found that, among other records, the complainant requested the following:

[A]ll documents created, received, or sent by Erika Ivanov including those transmitted via email accounts used for UCHC-related matters including [ivanov@nso.uhc.edu](mailto:ivanov@nso.uhc.edu) that meet the following criteria:

- a. Reference or mention Michael Aronow, M.D. from August 1, 2011 to December 23, 2013. Search terms are “Aronow” (“Aranow”, “Arano”, “Arronow”, “Arono”), “Mike”, and “Michael.”

- b. Reference or mention the first year medical student anatomy of the extremities course from August 1, 2013 to December 23, 2013. Search terms would include “anatomy”.

3. It is found that the complainant’s December 23, 2013 request (“December 23<sup>rd</sup> request”), described in paragraph 2, above, was the subject of the complainant’s March 17, 2014 appeal to the Commission, alleging that the respondents violated the FOI Act by denying such request. It is found that such appeal was dismissed for lack of subject matter jurisdiction (timeliness) on February 4, 2015. See Docket # FIC 2014-157, 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). It is further found that, despite the fact that the Commission dismissed his complaint in Docket # FIC 2014-157, by email dated February 4, 2015, the complainant informed the Commission and the respondents that he was withdrawing his December 23<sup>rd</sup> request and the respondents no longer needed to work on such request.

4. It is found that, the following day, February 5, 2015, the complainant made a request to the respondent FOI Officer, via email, for the following:

[1] all documents created, received, or sent by Erika Ivanov including those transmitted via email accounts used for UCHC-related matters including [ivanov@nso.uchc.edu](mailto:ivanov@nso.uchc.edu) that meet the following criteria:

- a. Reference or mention Michael Aronow, M.D. in the subject line or body of an email from July 1, 2011 to December 31, 2014 [.]
  - i. Search terms are “Aronow” (“Aranow”, “Arono”)
  - ii. Please exclude emails sent to (including ccs) or from Michael Aronow, M.D.
- b. Please provide all electronic documents via email or a CD[.]

[2] 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.<sup>1</sup>

5. It is found that the February 5, 2015 request (“February 5<sup>th</sup> request”), described in paragraph 4, above, is similar to the December 23<sup>rd</sup> request, described in paragraph 2, above, except that the February 5<sup>th</sup> request extends the search period by 13 months and excludes the names “Mike” and “Michael” from the search terms.

6. It is found that, by email dated February 9, 2015, the respondent FOI Officer acknowledged the receipt of the complainant’s February 5<sup>th</sup> request and informed the complainant that he had begun to process such request.

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<sup>1</sup> The Commission notes that the request for a list of emails and documents, which is described in section [2] of paragraph 4, above, is not at issue in this matter, and will not be further addressed herein.

7. It is found that on February 26, 2015, the complainant and respondents agreed, in connection with a separate FOI matter, to institute a new “search protocol” for the respondents’ handling of future records requests submitted by the complainant.

8. By email dated March 5, 2015, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide him with copies of the records described in paragraph 4, above. In his post-hearing briefs, the complainant requests that the Commission impose civil penalties against the respondents and order the respondents to promptly perform a more comprehensive, verifiable search that is agreeable to the complainant.

9. 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.

10. 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.

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

12. It is found that the records requested by the complainant are public records 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.

13. It is found that on April 8, 2015, the complainant emailed the respondents inquiring as to the status of his February 5<sup>th</sup> request.

14. It is found that on or about June 16, 2015, the respondent FOI Officer began his search for documents responsive to the complainant’s February 5<sup>th</sup> request. It is found that the FOI Officer contacted Erica Ivanov, whose records are at issue, and requested that she conduct a search for records responsive to the February 5<sup>th</sup> request. The FOI Officer was subsequently provided with a stack of documents which he reviewed to determine whether they were exempt from disclosure.

15. It is found that, by email dated July 22, 2015, the respondents provided the complainant with a 138 page PDF file containing responsive documents and a privilege log relating to the redactions made on certain documents. It is found that the privilege log listed eight categories of documents, including emails and attachments thereto, totaling 105 pages. The respondents claimed that such records were exempt from disclosure pursuant to §§1-210(b)(1), 1-210(b)(9), 1-210(b)(10) and 10a-154a, G.S., respectively.

16. The complainant claims that the respondents failed to provide him with documents responsive to his February 5<sup>th</sup> request in a prompt manner. He contends that since the February 5<sup>th</sup> request at issue was “substantially similar” to his December 23<sup>rd</sup> request, and since the FOI Officer had already performed a search for and had “documents in hand” for the period of August 1, 2011 to December 23, 2013, to and from Erica Ivanov, that were compiled in response to the complainant’s similar December 23<sup>rd</sup> request, it should have taken the respondents less time to provide him with documents in response to his February 5<sup>th</sup> request than if they had started from “scratch.” In addition, the complainant argues that the FOI Officer’s explanations for why he did not provide the complainant with any responsive documents prior to July 2015 were not credible. At the hearing, the complainant also requested that the hearing officer conduct an in camera review of those documents which were withheld from the complainant and determine whether the exemptions claimed by the respondents were valid.

17. With respect to the complainant’s claim that the records, described in paragraph 15, above, were not provided to him “promptly,” the Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

18. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request. In addition, common sense and good will ought to be the guiding principles.

19. The respondents contend that they have complied in good faith with the requirements of the FOI Act and submit that, based on the totality of facts and circumstances, they promptly responded to the complainant’s February 5<sup>th</sup> request and provided the complainant with all records responsive to his request that were not exempt from disclosure. The FOI Officer acknowledges that, at the time of the complainant’s February 5<sup>th</sup> request, he had documents “in hand” from the period of August 1, 2011 through December 23, 2013, to and from Erika Ivanov, that were compiled in response to the complainant’s December 23<sup>rd</sup> request. The respondents claim, however, that the February 5<sup>th</sup> request is “materially different” from the December 23<sup>rd</sup>

request, including different search terms and date parameters. The respondents contend that changing the dates expanded the “universe of documents” of potentially responsive documents to the complainant’s February 5<sup>th</sup> request. In addition, the December 23<sup>rd</sup> request was the subject of an earlier appeal which was dismissed by the Commission and subsequently withdrawn by the complainant as described in paragraph 3, above.

20. The respondents contend that given the complainant’s litigious approach, the respondents believed in good faith that relying on the results of the prior search would only subject the respondents to attack and cause confusion. In addition, the respondents contend that it was prudent to wait to conduct a search for documents that were responsive to the February 5<sup>th</sup> request until a new search protocol was finalized that was clear and would withstand scrutiny.

21. Moreover, the respondents contend that the FOI Officer required sufficient time to handle other priorities including responding to the complainant’s other requests (*e.g.*, at the time of the hearing in this matter, the complainant had filed 10 requests with the respondents in 2015); the complainant’s discovery requests relating to his Office of Public Hearings (“OPH”) action against the respondents; and records requests from other requesters. The FOI Officer also testified that he was responsible for running University of Connecticut Health Center board meetings, handling compliance mandates regarding patient care and safety, healthcare and education of graduate students, and was in the process of finding a replacement for his administrative assistant who announced that she was leaving.

22. The Commission appreciates the respondents’ need to prioritize their duties and responsibilities, and their desire to avoid further confusion and scrutiny regarding the complainant’s various records requests. It is found, however, that based on the facts and circumstances of this case, the respondents unduly delayed working on the complainant’s February 5<sup>th</sup> request until June 2015, approximately four and a half months after receipt of such request and approximately a month after the respondents finalized a new search protocol for handling the complainant’s records requests. It is further found that the respondents failed to comply “promptly” with the complainant’s February 5<sup>th</sup> request within the meaning of §§1-210(a) and 1-212(a), G.S. It is concluded that the respondents thereby violated those provisions.

23. After the hearing in this matter, pursuant to an order of the hearing officer, the respondents submitted 42 pages of unredacted documents to the Commission for in camera review, which are identified as IC-2015-171-1 through IC-2015-171-42. On the in camera index, the respondents claim that such documents are exempt pursuant to §§1-210(b)(4), 1-210(b)(10) and 52-146r, G.S. The Commission notes that, by letter dated August 27, 2015, which was submitted by the respondents with the in camera index and documents, the respondents informed the hearing officer that while preparing the in camera index, the respondents “decided not to claim exemptions for 61 full pages of documents, and only partial redactions on two others.” The respondents informed the hearing officer that such documents were sent to the complainant by email on August 11, 2015 along with a revised privilege log. Having received no objection from the complainant regarding the 61 full pages of documents and the partial redactions, the Commission shall hereby consider only IC-2015-171-1 through IC-2015-171-42 for in camera review.

24. Section 1-210(b)(10), G.S., provides that mandatory disclosure is not required of “communications privileged by the attorney-client relationship....”

25. Established Connecticut law defining the attorney-client privilege governs the applicability of the exemption contained in §1-210(b)(10), G.S. Such law is well set forth in Maxwell v. FOI Commission, 260 Conn. 143 (2002). In that case, the Supreme Court stated that §52-146r, G.S., which established a statutory privilege for communications between public agencies and their attorneys, merely codifies “the common-law attorney-client privilege as this court previously had defined it.” Id., at 149.

26. Section 52-146r(2), G.S., defines “confidential communications” as:

all oral and written communications transmitted in confidence between a public official or employee of a public agency acting in the performance of his or her duties or within the scope of his or her employment and a government attorney relating to legal advice sought by the public agency or a public official or employee of such public agency from that attorney, and all records prepared by the government attorney in furtherance of the rendition of such legal advice. . . .

27. The Supreme Court has stated that “both the common-law and statutory privileges protect those communications between a public official or employee and an attorney that are confidential, made in the course of the professional relationship that exists between the attorney and his or her public agency client, and relate to legal advice sought by the agency from the attorney.” Maxwell, supra at 149.

28. Upon careful examination of the in camera records, described in paragraph 23, above, it is found that the following records are communications transmitted in confidence between an attorney(s) for the respondents and employees and officials of the respondents relating to legal advice sought by the respondents or in furtherance of the rendition of such legal advice, within the meaning of §§1-210(b)(10) and 52-146r(2), G.S.: IC-2015-171-1 (lines 1-27); IC-2015-171-2 through IC-2015-171-8, IC-2015-171-10 (lines 1-35), and IC-2015-171-13 through IC-2015-171-42.<sup>2</sup>

29. It is concluded that the records referenced in paragraph 28, above, constitute communications privileged by the attorney-client relationship within the meaning of §1-210(b)(10), G.S., and are exempt from disclosure pursuant to §1-210(b)(10), G.S. Accordingly, the respondents did not violate the FOI Act by withholding such records from disclosure.

30. With respect to IC-2015-171-1 (lines 28-36), IC-2015-171-9, IC-2015-171-10 (lines 36-39), IC-2015-171-11 and IC-2015-171-12, it is found that such records are not

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<sup>2</sup> The respondents submitted the in camera records without providing specific line references on the in camera records. The hearing officer therefore supplied line references, in pencil, on the in camera records, in an effort to avoid confusion regarding the permitted redactions.

communications privileged by the attorney-client relationship, and are not exempt from disclosure pursuant to §1-210(b)(10), G.S.

31. The respondents also claim that IC-2015-171-1 (lines 28-36), IC-2015-171-9, IC-2015-171-10 (lines 36-39), IC-2015-171-11 and IC-2015-171-12, are exempt under §1-210(b)(4), G.S.

32. Section 1-210(b)(4), G.S., permits an agency to withhold from disclosure “[r]ecords pertaining to strategy and negotiations with respect to pending claims or pending litigation to which the public agency is a party until such litigation or claim has been fully adjudicated or otherwise settled[.]”

33. Section 1-200(8), G.S., defines “pending claim” as “a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action in an appropriate forum if such relief or right is not granted.”

34. Section 1-200(9), G.S., defines “pending litigation” as:

(A) a written notice to an agency which sets forth a demand for legal relief or which asserts a legal right stating the intention to institute an action before a court if such relief or right is not granted by the agency; (B) the service of a complaint against an agency returnable to court which seeks to enforce or implement legal relief or a legal right; or (C) the agency’s consideration of an action to enforce or implement legal relief or a legal right.

35. After a careful review of IC-2015-171-1 (lines 28-36), IC-2015-171-9, IC-2015-171-10 (lines 36-39), IC-2015-171-11 and IC-2015-171-12, it is found that such records do not pertain to any “strategy or negotiation” with respect to the complainant’s pending litigation against the respondents. It is therefore found that such records are not exempt from disclosure pursuant to §1-210(b)(4), G.S.

36. It is therefore concluded that the respondents violated the FOI Act by denying the complainant access to IC-2015-171-1 (lines 28-36), IC-2015-171-9, IC-2015-171-10 (lines 36-39), IC-2015-171-11 and IC-2015-171-12.

37. The Commission notes that the complainant’s request for civil penalties was not fairly raised in the complaint, and was only raised in the complainant’s post-hearing briefs. Based on the facts and circumstances of this case, the Commission declines to consider the imposition of civil penalties.

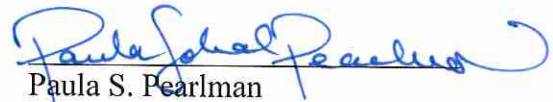
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall provide the complainant with in camera records IC-



2015-171-1 (lines 28-36), IC-2015-171-9, IC-2015-171-10 (lines 36-39), IC-2015-171-11 and IC-2015-171-12.

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



Paula S. Pearlman  
as Hearing Officer