

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Barry Natale,

Complainant

against

Docket #FIC 2016-0403

Commissioner, State of Connecticut,
Department of Veterans' Affairs; and State of
Connecticut, Department of Veterans' Affairs,

Respondents

April 12, 2017

The above-captioned matter was heard as a contested case on September 16, 2016, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0402, Barry Natale v. Commissioner, State of Connecticut, Department of Veterans' Affairs, et al., and Docket #FIC 2016-0404, Barry Natale v. Commissioner, State of Connecticut, Department of Veterans' Affairs, et al.

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. By letter of complaint filed May 26, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him certified copies of certain public records.
3. It is found that by email, dated May 10, 2016, the complainant requested:

[c]ertified copies of the investigatory report created by Ms. Sharon Gaddy concerning my application for a Clerk Typist position with the CT DVA. The scope of this request not only includes the full and complete investigatory report, but also any and all contemporaneous notes, email traffic of any kind, and any other form of correspondence related to Ms. Gaddy's investigation. It also includes any notes that she may have taken during our telephone conversations.
4. It is found that, by letter dated June 29, 2016, the respondents delivered to the complainant the requested investigative report.

5. The complainant contended that the respondents' June 29, 2016 response was incomplete, because, for example, they did not provide him a copy of his own affirmative action complaint.

6. The respondents contended that they did not understand the complainant to be requesting a copy of his own affirmative action complaint, which originated with him, but offered a copy of it to him at the hearing on this matter.

7. It is concluded that the respondents did not violate the FOI Act by failing to initially provide the complainant a copy of his own affirmative action complaint.

8. The complainant further contended that there must be other records responsive to his request, such as Ms. Gaddy's notes, and the supporting documentation referenced in her investigative report.

9. The respondents did not argue that other records do not exist; only that such records are not, and never were, in their possession, or used by them.

10. It is found that Ms. Gaddy was an independent investigator, not an employee of, or otherwise affiliated with, the respondents. (Ms. Gaddy was a retired state employee working at the time as a Temporary Worker Retiree at Central Connecticut State University, Gateway Community College).

11. It is found that Ms. Gaddy conducted her investigation and provided the respondents with a report, dated March 28, 2016, concluding that there was insufficient evidence to support Mr. Natale's allegations. This report is the investigative report that was provided to the complainant.

12. It is found that any other records created or used by Ms. Gaddy in her investigation and report, if they exist, remain with Ms. Gaddy.

13. It is found that a diligent search of the respondents' files discovered no other responsive documents to the complainant's request.

14. It is found that the respondents have no knowledge of, nor access to, copies of any documents that Ms. Gaddy may have created, including any notes or supporting documentation. It is found that the respondents deliberately avoided access to such records, in order to avoid any potential interference with the independence of Ms. Gaddy's investigation and conclusion.

15. 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, 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.

16. 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.

17. 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.”

18. It is found that the respondents never maintained or kept on file any responsive records other than the investigative report provided to the complainant. It is also found that any additional records used only by Ms. Gaddy were not prepared, owned, used, received or retained by the respondents.

19. It is therefore concluded that only the investigative report requested by the complainant, and provided to him, is a public record within the meaning of §§1-205(5), 1-210(a), and 1-212(a), G.S.

20. It is therefore concluded that the respondents did not violate the FOI Act as alleged.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2017.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

Barry Natale
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Commissioner, State of Connecticut, Department of Veterans'
Affairs; and State of Connecticut, Department of Veterans' Affairs
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Cynthia A. Cannata
Acting Clerk of the Commission