

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Joseph Sastre,

Complainant

against

Docket #FIC 2017-0606

Secretary, State of Connecticut,
Office of Policy and Management,
Office of Labor Relations; and
State of Connecticut, Office of
Policy and Management,
Office of Labor Relations,

Respondents

August 8, 2018

The above-captioned matter was heard as a contested case on June 28, 2018, at which time the complainant 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, by email dated September 29, 2017, the complainant requested that the respondents provide him with a copy of a particular arbitrator's decision.
3. By letter dated and filed October 5, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with a copy of the record referenced in paragraph 2, above. In addition, the complainant requested that the Commission impose a civil penalty against the respondents.
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, 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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, 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 that “[a]ny 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 the requested record is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the complainant filed a complaint with the Commission because, after waiting six days from the date of his request, he had received no response from the respondents. It is further found that, before he filed his complaint, he left a telephone message for the respondents, which went unanswered.

9. It is found that, on June 6, 2018, the respondents emailed the complainant the requested record.

10. The complainant contends that the respondents violated the promptness provisions of the FOI Act.

11. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of statements requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the statements; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

12. It is found that the employee in the Office of Labor Relations to whom the complainant emailed the original request was not the person who generally handles FOI requests. It is further found that, while it was suggested to the complainant that he address his FOI request to this particular employee, such information was incorrect. It is found that the respondents' legal office is the entity that processes FOI requests. At the contested case hearing, the respondents recognized that the request somehow "fell through the cracks."

13. It is further found that the employee to whom the email request was addressed candidly admitted in an email to respondents' counsel that she "missed the email." It is found that this employee, who receives numerous emails on a daily basis, is currently assisting in the negotiation of 13 contracts and is responsible for scheduling collective bargaining matters. It is found that it is very likely that the complainant's email was deleted in error.

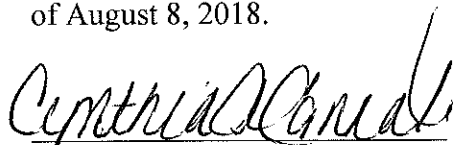
14. It is found, however, that when the respondents' legal department realized that the request had not been fulfilled, it immediately gathered the requested report and provided it to the complainant. It is found that there was no attempt to delay or avoid processing the request in this case.

15. Finally, it is found that, since the disclosure of the requested record in the instant case, the complainant has made two additional requests for records from these respondents. It is found that one of the requests involved a multi-page, tabbed exhibit as well as audio recordings. It is found that both of the subsequent requests were dealt with in an extremely prompt manner.

16. It is concluded that the respondents unintentionally violated the promptness provisions of the FOI Act. It is further concluded that a civil penalty would not be appropriate based on these facts.

Based on the facts and circumstances of this case, no order by the Commission is hereby recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 8, 2018.



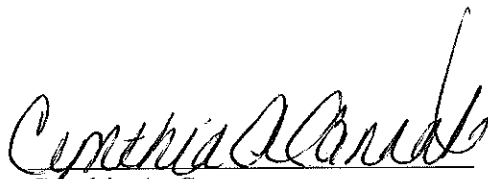
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JOSEPH SASTRE, The Law Office of Joseph R. Sastre, LLC, 67 Chestnut Street, Bristol, CT 06010

SECRETARY, STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT, OFFICE OF LABOR RELATIONS; AND STATE OF CONNECTICUT, OFFICE OF POLICY AND MANAGEMENT, OFFICE OF LABOR RELATIONS, c/o Attorney Gareth Bye, Office of Policy and Management, 450 Capitol Avenue, Hartford, CT 06106



Cynthia A. Cannata
Acting Clerk of the Commission