

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION
UPON RECONSIDERATION

Yvonne Perkins,

Complainant

against

Docket #FIC 2017-0702

Chief, Police Department,
City of Danbury; Police
Department, City of Danbury;
and City of Danbury,

Respondents

November 14, 2018

The above-captioned matter was heard as a contested case on February 21, 2018, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC 2017-0703; Michael Baptiste v. Chief, Police Department, City of Danbury; Police Department, City of Danbury; and City of Danbury.

On July 25, 2018, the Hearing Officer issued a Proposed Final Decision, which was considered and unanimously adopted by the Commission at its regular meeting of August 22, 2018. (A copy of the Final Decision was mailed to the parties on August 27, 2018.)

On August 24, 2018, the Commission issued a notice to the parties which stated: "At the Freedom of Information Commission's regular meeting of August 22, 2018, the Commission voted to remand the matter in Docket #FIC 2017-0703; Michael Baptiste v. Chief, Police Department, City of Danbury; Police Department, City of Danbury; and City of Danbury, which was consolidated with the above-captioned matter. If the parties wish to have this matter reconsidered by the Commission at its next meeting of September 12, 2018, please notify the Commission, in writing, by September 4, 2018." On August 31, 2018, the complainant filed a request for reconsideration, which was granted by the Commission at its September 12, 2018 meeting.

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 letter dated October 19, 2017, the complainant made a request to the respondents for copies of the following:

All emails containing the KEYWORD:
Yvonne Perkins
Moore Bail Bonds
Bail Bonds
American Surety

(“October 19th request”).

3. It is found that, by letter dated October 25, 2017, the respondents, through their attorney, requested that the complainant narrow her October 19th request with “less expansive keywords limited to a defined, reasonable timeframe.” They informed the complainant that her request, as submitted, “requires an impossibly long and labor intensive project in that it is overbroad and unlimited in scope and covers an infinite time frame. It requires the Department to locate, print out, conduct an exemption review and determination and create an exemption index. That search, review and indexing of every document containing the words ‘Bail Bonds’ in police and municipal computers for an infinite time period would require dedicated technology, personnel and monetary resources beyond what the Danbury Police Department can staff.”

4. It is found that, by emails sent on October 25, 2017, and October 26, 2017, respectively, the complainant narrowed the scope of her October 19th request to all emails containing the keywords “Yvonne Perkins” “Moore Bail Bonds” and “American Surety” for the period from January 2013 to October 2017. She also informed the respondents that she “would get back to [them] about narrowing the scope of the Keyword Search: Bail Bonds.”

5. By email received and filed on November 21, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her access to the records requested in the complainant’s October 19th request, described in paragraphs 2 and 4, above.

6. Section 1-200(5), G.S., provides:

“[p]ublic 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.

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

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

8. 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.”

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

10. It is found that upon receiving the October 19th request, the respondent Police Department determined that such request was “complicated” and “involved lots of different material” to which they did not have access, and immediately forwarded such request to the respondents’ corporation counsel for review.

11. It is found that, on or about December 18, 2017, the respondents unsuccessfully attempted to mail a package to the complainant containing documents responsive to her October 19th request. The address utilized by the respondents did not contain the complainant’s full address (i.e., missing unit number). It is found that, upon discovering their mistake, in early January 2018, the respondents informed the complainant that they would resend such documents.

12. It is found that between January 9, 2018, and February 1, 2018, the respondents provided the complainant with over 600 pages of documents which were responsive to her October 19th request. It is found that the respondents, at the request of the State Attorney’s Office, initially withheld certain records that they claimed related to an ongoing investigation and pending prosecution, and were therefore exempt from disclosure. It is further found, however, that such withheld records were subsequently provided to the complainant.

13. At the hearing, the complainant contended that the respondents purposefully delayed providing her with records responsive to her October 19th request, and that such documents were only provided to her after she filed her complaint with the Commission. In addition, the complainant contended that the respondents failed to provide her with all records responsive to her request, and identified four specific emails.

14. With respect to the issue of promptness, 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.

15. 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.

16. At the hearing, the respondents contended that they made a good faith effort to comply with the October 19th request, and that there was no intent to delay providing responsive records to the complainant. Attorney Dianne Rosemark, who, among other responsibilities, is responsible for handling FOI matters for the City of Danbury, testified that the October 19th request was extremely broad and would potentially involve the review of hundreds of documents. She testified that, at the time of the October 19th request, her workload was “particularly intense”, and therefore, she requested the assistance of outside counsel with processing the October 19th request. Attorney Rosemark testified that upon receiving the narrowed search terms and time parameters, described in paragraph 4, above, she immediately contacted the respondents’ IT Department, which conducted a search that generated hundreds of emails that she then proceeded to review. Attorney Rosemark testified that she spent “the majority of her workweek, for many, many weeks,” working on the October 19th request, as well as on other similar requests. She testified that in addition to her review of the emails, the respondents’ outside counsel reviewed the responsive emails to determine whether there were any records exempt from disclosure. Attorney Rosemark also testified that she was unaware that the complainant believed that emails were missing until the hearing in this matter.

17. With respect to the records that the complainant claims are still missing, it is found that the respondents have provided the complainant with all records responsive to the complainant’s October 19th request.

18. It is found that, under the facts and circumstances of this case, the respondents provided the requested records to the complainant in a prompt manner.

19. It is concluded that the respondents did not violate §§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. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 14, 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:

YVONNE PERKINS, 4 Moss Avenue, Danbury, CT 06810

CHIEF, POLICE DEPARTMENT, CITY OF DANBURY; POLICE DEPARTMENT, CITY OF DANBURY; AND CITY OF DANBURY, c/o Attorney D. Randall DiBella, Cramer and Anderson, 51 Main Street, New Milford, CT 06776



Cynthia A. Cannata
Acting Clerk of the Commission