

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Virginia Brown,

Complainant

Docket #FIC 2016-0118

against

Kevin Lembo, Comptroller,  
Office of the State Comptroller; and  
Office of the State Comptroller,  
State of Connecticut,

Respondents

November 16, 2016

The above-captioned matter was heard as a contested case on May 17, 2016, at which time the complainant and the respondents appeared 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. By letter dated and filed February 11, 2016, the complainant appealed to this Commission, alleging that the respondents failed to comply with paragraphs 1 through 4 of the Commission's order in Docket #FIC 2015-055; Virginia Brown v. Comptroller, State of Connecticut, Office of the Comptroller; and State of Connecticut, Office of the Comptroller (December 16, 2015).<sup>1</sup> The complainant requested that the Commission issue an order (1) requiring the respondents to immediately comply with the Commission's order; (2) imposing a civil penalty against the named respondent; and (3) requiring the respondents and their staff to participate in Freedom of Information training. The docketing letters, which included a copy of the complainant's complaint, were sent by the Commission to the parties on April 1, 2016.

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<sup>1</sup> In her complaint, the complainant did not allege that the respondents failed to comply with paragraph 5 of the Commission's order in Docket #FIC 2015-055, which required the disclosure of certain draft RFPs. Accordingly, such order is not at issue and shall not be further addressed herein.

3. The Commission takes administrative notice of its record and final decision in Docket #FIC 2015-055. In particular, the Commission takes administrative notice of paragraphs 1 through 4 of its order, which provide:

1. The respondents shall forthwith undertake a search for the records described in paragraph 26 of the findings, above, and provide copies of any responsive records to the complainant, free of charge. If the respondents do not locate any records responsive to the complainant's request, the respondents shall provide the complainant with an affidavit detailing the results of their search.
2. The respondents shall forthwith undertake a search for monthly status reports prepared by the Disability Unit within the OSC's Retirement Services Division as described in paragraph 27 of the findings, above, and provide copies of such records, if any, to the complainant, free of charge. If the respondents do not locate any records responsive to the complainant's request, the respondents shall provide the complainant with an affidavit detailing the results of their search.
3. The respondents shall forthwith provide the complainant with unredacted copies of IC-2015-055-1 through IC-2015-055-7 and IC-2015-055-14 through IC-2015-055-16 as described in paragraphs 34 and 36 of the findings, above, free of charge.
4. The respondents shall forthwith provide the complainant with the unredacted calendar entries described in paragraphs 51, 52 and 53 of the findings, above, free of charge.

4. It is found that on November 17, 2015, the hearing officer issued his Proposed Final Decision, dated November 14, 2015, in Docket #FIC 2015-055.

5. It is found that upon receiving a copy of the Proposed Final Decision, Assistant Attorney General ("AAG") Josephine Graff, who has represented the respondents in various matters for several years, including at the hearings in Docket #FIC 2015-055, contacted Natalie Braswell, Assistant Comptroller and General Counsel for the Office of the State Comptroller ("OSC"). Attorney Braswell, whose duties include responding to FOI requests, had the OSC's IT Department conduct a search for emails that were responsive to the proposed order, described in paragraph 3, above. Attorney Braswell compiled the located emails and other documents responsive to the proposed order and forwarded such records to AAG Graff. It is also found that on December 16, 2015, Attorney Braswell executed an affidavit detailing her search for the records responsive to the proposed order.

6. It is found that at the Commission's December 16, 2015 regular meeting, the hearing officer proposed several amendments to his Proposed Final Decision which were unanimously

adopted by the Commission. The Commissioners unanimously voted to amend the Proposed Final Decision and to approve such decision, as amended. The Notice of Final Decision in Docket #FIC 2015-055 was issued on December 22, 2015.

7. It is found that on or about April 5, 2016, AAG Graff received a copy of the docketing letters in this matter. It is also found that, by two separate emails dated April 5, 2016, AAG Graff forwarded 46 pages of records and Attorney Braswell's Affidavit, described in paragraph 5, above, to the complainant's attorney, in response to the Commission's final order in Docket #FIC 2015-055.

8. The complainant maintains that the respondents failed to immediately provide to the complainant the documents that the Commission ordered to be disclosed in Docket #FIC 2015-055. In addition, she contends that the respondents' failure to comply with the Commission's order warrants the imposition of civil penalties. The Commission notes that the complainant has not alleged that the records provided to her by the respondents are not responsive to the Commission's order.

9. The respondents acknowledge that they failed to provide responsive documents to the complainant in a timely manner, but contend that such failure was inadvertent, and submit that civil penalties are not warranted.

10. At the hearing in this matter, AAG Graff testified that she had intended to hand-deliver to the complainant's attorney the responsive documents and affidavit provided to her by Attorney Braswell at the Commission's December 16, 2015 meeting. AAG Graff testified that she ultimately decided to hold onto the records until she had an opportunity to review the Commission's Final Decision (with amendments) in Docket #FIC 2015-055. AAG Graff also testified that due to the holidays and her work schedule, the earliest that she would have seen the Final Decision was on or about December 28, 2015. AAG Graff testified that after she received the Final Decision, she intended to discuss such decision with Attorney Braswell, but she was on vacation. In addition, AAG Graff testified that she first realized that she had forgotten to provide the complainant with the responsive records when she received copies of the docketing letters on April 5, 2015. Upon realizing her error, she immediately emailed the complainant's attorney copies of such records. She testified that she felt "horrible" and apologized for her mistake.

11. The Commission notes that at no time between the receipt of the Final Decision and the filing of the complaint in this matter did the complainant follow-up with the respondents to inquire about the records that were responsive to the Commission's final order.

12. Nevertheless, it is found that the respondents did not comply with the order described in paragraph 3, above, until April 5, 2016, approximately three months after the issuance of the Final Decision.

13. It is concluded that the respondents did not comply with the order "forthwith," as directed.

14. With respect to the civil penalty requested by the complainant, §1-206(b)(2), G.S.,

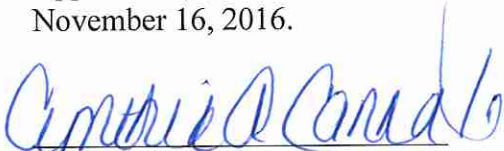
provides, in relevant part:

upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

15. It is found that the delay in providing the records was neither intentional nor willful, nor without reasonable grounds, but rather was the result of an honest mistake, for which the respondents have apologized.

Under the facts and circumstances of this case, no order is recommended, and the Commission in its discretion declines to impose a civil penalty against the named respondent.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 16, 2016.



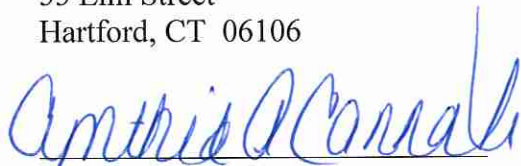
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

Virginia Brown  
54 Hollister Drive  
Avon, CT 06001

Kevin Lembo, Comptroller, Office of the State Comptroller;  
and Office of the State Comptroller, State of Connecticut  
c/o Philip Miller, Esq.  
Assistant Attorney General  
State of Connecticut,  
Office of the Attorney General  
55 Elm Street  
Hartford, CT 06106



Cynthia A. Cannata  
Acting Clerk of the Commission