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Malcolm Ashley,
Complainant(s)
against

Chairman, Police Commission, City of Bridgeport;
Police Commission, City of Bridgeport;
and City of Bridgeport,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0680

February 24, 2017

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, March 22, 2017.** 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 March 10, 2017***. 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 March 10, 2017***. **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 March 10, 2017***, 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

W. Paradis
Acting Clerk of the Commission

Notice to: Malcolm Ashley
Attorney Tyisha S. Toms

FIC# 2016-0680/Trans/wrbp/KKR//PSP/2017-02-24

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Malcolm Ashley,

Complainant

against

Chairman, Police Commission, City of Bridgeport; Police Commission, City of Bridgeport; and City of Bridgeport,

Respondents

Report of Hearing Officer

Docket #FIC 2016-0680

January 20, 2017

The above-captioned matter was heard as a contested case on December 1, 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. It is found that, during a telephone conversation with Lieutenant O'Donnell, of the Bridgeport Police Department, the complainant verbally requested the "tape and/or transcript of the 6 September 2016 meeting" of the respondent Police Commission. It is found that Lt. O'Donnell informed the complainant during that conversation that he needed to make his records request in writing. It is found that the respondents never received a written request from the complainant for the records at issue, and that they did not conduct a search for such records at the time of the complainant's verbal request.

3. By letter dated September 26, 2016, and filed September 27, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to the request, described in paragraph 2, above.

4. 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.

5. 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 (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. It is found that the records, described in paragraph 2, above, are public records within the meaning of §§1-200(5), and 1-210(a), G.S.

7. 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."

8. In Planning and Zoning Commission of the Town of Pomfret v. Freedom of Information Commission, 130 Conn. App. 448, 456 (2011), the appellate court concluded that "[t]he language of §1-212(a) clearly and unambiguously requires that an individual seeking to receive a copy of a public record…must reduce the request to writing in order for the request to be enforceable by the commission."

9. Counsel for the respondents became aware of the verbal request for the records, described in paragraph 2, above, in the context of responding to five other records requests addressed to the respondents by the complainant. Upon becoming aware of the request at issue in this case, counsel contacted Lt. O'Donnell who informed counsel that, although she (Lt. O'Donnell) had informed the complainant that his request needed to be made in writing, no written request was received for the records, described in paragraph 2, above, and that therefore, she did not conduct a search at that time for responsive records.[1]

10. Based upon the foregoing, it is concluded that, because the complainant failed to request the records, described in paragraph 2, above, in writing, the respondents did not violate the FOI Act by failing to provide such records to the complainant.

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[1] Although not required to do so under the facts of this case, the respondents, by the time of the hearing in this matter, had searched for, and located, the records responsive to the request, described in paragraph 2, above, and made a copy of such records for the complainant.

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.

Kathleen K. Ross
as Hearing Officer

FIC 2016-0680/hor/kkr/01202017