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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Valayshia Brookins,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0506

Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,
Respondent(s)

May 3, 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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 24, 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 May 12, 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 May 12, 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 May 12, 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: Valayshia Brookins
Assistant Attorney General Neil Parille

FIC# 2016-0506/Trans/wrbp/VRP//TCB/2017-05-03

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Valayshia Brookins,

Complainant

against

Docket #FIC 2016-0506

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

April 26, 2017

The above-captioned matter was heard as a contested case on September 29, 2016, 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. By letter of complaint filed July 12, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to acknowledge her request for certain public records within four business days of the request.
3. It is found that the complainant made a July 5, 2016 request to the respondents for copies of eight categories of records related to her April 18, 2016 traffic stop, including records of the stop itself, evaluations of and records of complaints against the trooper who stopped her; policies with respect to “Race-Relations;” procedures and forms for filing a complaint against a trooper; and documentation of all complaints against Trooper First Class employees for civil rights violations and other offenses from January 1, 2012 through January 1, 2016.
4. It is found that the respondents acknowledged the request on July 11, 2016.

5. It is further found that the respondents advised the complainant on August 2, 2016 that, upon receipt of a check for \$16.00, they would commence a search for records of her traffic stop. The complainant did not remit \$16.00.

6. It is further found that the respondents on September 15, 2016 replied to the complainant's request, attaching (a) the one page computer-aided dispatch notes concerning the complainant's traffic stop; (b) a list and summary of the complaints filed against the trooper who stopped her; (c) the respondents' Administration & Operations Manual, Section 16.1.7, *Biased-Based Profiling Policy*; and the respondents' Uniform Civilian Complaint form. The respondents advised the complainant that trooper evaluations are not disclosable under the FOI Act, citing the applicable statute and Supreme Court case. The respondents further advised the complainant that they had requested documentation of all complaints against Trooper First Class employees from the unit that keeps those records. Finally, the respondents advised the complainant that there were no other records responsive to her request.

7. It is found that the respondents on September 26, 2016 provided to the complainant documentation of all complainants against Trooper First Class employees for the period requested by the complainant.

8. It is found that, with the exception of the trooper's job evaluations, and accident or investigative reports of the complainant's traffic stop, which the respondents will search for upon receipt of the \$16.00 fee, the respondents provided all records responsive to the complainant's request.

9. 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.

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

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.

11. 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.”

12. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. With respect to the fee for the search for an investigative report requested by the complainant, §29-10b, G.S., provides:

The Commissioner of Emergency Services and Public Protection shall charge the following fees for the item or service indicated:

(1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, sixteen dollars.

(2) Each copy of an accident or investigative report, sixteen dollars.

14. The complainant does not challenge the applicability of §29-10b, G.S., to her request, but also did not provide the fee. It is found that the respondents will commence a search for any investigative or accident report as soon as the complainant remits the fee.

15. With respect to the requested evaluation records of the trooper who stopped the complainant, §5-225, G.S., provides:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, *a person who has not achieved a passing rating may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination, subject to such regulations as may be issued by the Commissioner of Administrative Services.* Not later than ten days after inspecting his or her papers, a person may, in writing, appeal to the Commissioner of Administrative Services the accuracy of his or her final earned rating, as based on the original examination paper or responses. The commissioner shall render a final decision on

the person's appeal within thirty days thereafter and correct candidate lists as appropriate. [Emphasis added.]

16. Additionally, §5-237, G.S., provides, in relevant part, that:

[a]ny employee in the classified service shall have the right, at reasonable times during office hours, to *inspect his service rating*, as shown by the records of the Department of Administrative Service or the department, agency or institution in which such employee is employed. . . .” [Emphasis added.]

17. In *Personnel Director, Department of Income Maintenance v. FOIC*, 214 Conn. 312 (1990), the Supreme Court found that “the disclosure and inspection referred to under §5-225 applies only to the candidate who has taken the examination.” *Id.* at 320. Based on this finding, the Supreme Court held that §5-225, G.S., provided an exemption from mandatory disclosure with reference to persons other than a person seeing their own examination papers:

In conclusion, [§1-210(a)] provides that all records kept on file by public agencies shall be public records ‘[e]xcept as provided by any federal law or state statute.’ We hold that §§5-225 and 5-237 provide such an exception for the requested personnel files, which contained the promotional examination records of candidates for program supervisor other than the candidate’s own records.

Id. at 321.

18. It is found that “service ratings” and “earned ratings on examinations” constitute the state’s records of evaluations of its employees, are exempt from disclosure, and that therefore the respondents did not violate the FOI Act by withholding those records.

19. The complainant maintains that the respondents violated §1-206, G.S., by not acknowledging her request until six business days had elapsed following her request.

20. Section 1-206, G.S., provides in relevant part:

(a) Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and

(c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

(b)(1) Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

21. It is concluded that the failure of the respondents to deny the request within four business days means, pursuant to §1-206(a), G.S., that the request was deemed to be denied, and that the complainant was therefore entitled to file a complaint pursuant to §1-206(b)(1), G.S.

22. It is concluded that failure to deny a request within four business days simply triggers a requester's right to file a complaint with the Commission, which the complainant in this case did.

23. It is concluded that the only records withheld by the respondents are an investigative report, for which the respondent may properly demand \$16.00 before commencing the search; and employee evaluation records exempt pursuant §5-237, G.S.

24. It is concluded that the respondents promptly provided all other records responsive to the complainant's request.

25. 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.



Victor R. Perpetua
as Hearing Officer