

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Edmundo Mendieta,

Complainant

against

Docket #FIC 2015-628

Dora B. Schriro, Commissioner,
State of Connecticut, Department of
Emergency Services and Public
Protection; and State of Connecticut,
Department of Emergency Services
and Public Protection,

Respondents

July 13, 2016

The above-captioned matter was heard as a contested case on May 16, 2016, at which time the complainant and the respondent appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al., Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 September 21, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for a waiver of copying fees by reason of his alleged indigence. The complainant also requested the imposition of a civil penalty against the respondents.
3. It is found that, by letter dated August 28, 2015, the complainant requested from the respondents a copy of:

... any and all records, documents, memos, photographs, maps, diagrams, audio recordings, investigation reports, written statements of police employees and/or civilian witnesses, videotapes, and including any and all materials in your agency's possession pertaining to the April 28, 2012 death of an individual

by a motor vehicle on Route 8 in Naugatuck, Connecticut resulting in the arrest of the undersigned FOI requester in 2013. [Emphasis omitted.]

The complainant also requested “pursuant to the FOI state statute the immediate waiver of any and all fees for the records being sought by the undersigned due to his indigency.”

4. It is found that, by letter dated September 4, 2015 to the complainant, the respondent Department informed the complainant that his request “will be processed in accordance with the provisions of the Freedom of Information Act and any other applicable provision of state or federal law.” The Department asserted that “waiver of the statutory fee for an indigent individual pursuant to Conn. Gen. Stat. §1-212(d)(1) does not apply to the fee for investigative reports pursuant to Conn. Gen. Stat. §29-10(b).” The Department informed the complainant that it would commence the search upon receipt of his check in the amount of \$16.00 made payable to the Department.

5. 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.

6. 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.

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

8. Section 1-212(a)(1), G.S., also provides in relevant part that the fee for any copy provided in accordance with the FOI Act by a state agency “. . . shall not exceed twenty-five cents per page . . .” and §1-212(d)(1), G.S., provides in relevant part that “. . . [t]he public agency shall waive any fee *provided for in this section* when . . . [t]he person requesting the records is an indigent individual. . . .” [Emphasis added.]

9. Section 29-10b, G.S., provides:

The Commissioner of Public Safety 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, six dollars, and on and after July 1, 1993, eight dollars.

(2) Each copy of an accident or investigative report, six dollars, and on and after July 1, 1993, eight dollars.

10. It is found that the records maintained by the respondent that are responsive to the complainant's request are "reports" within the meaning of §29-10b, G.S.

11. The Commission takes administrative notice of its records and files in Docket #FIC 2004-109, Cook v. Department of Public Safety et al. In that case, the Commission concluded in paragraph 16:

Since the fee provided for in section 29-10b, G.S., is not a fee provided for in [§1-212, G.S.], and §29-10b, G.S., does not itself provide for an indigence waiver, it does not appear that the complainant may avoid the eight dollar fee under §29-10b, G.S., by claiming indigence under [§1-212, G.S.] However, since the respondent acknowledged to both the complainant and the Commission that it would waive the fee under §29-10b, G.S., if the complainant demonstrated that he was in fact indigent, the Commission will address the claim.

12. At the time of the Cook decision, the Department indicated its intention to use the Department of Correction ("DOC") standard for indigence, which is based on the inmate having less than \$5.00 in his trust account. The Commission in Cook then went on to find that the complainant admitted to not meeting the DOC standard, and concluded that therefore the Department had not violated any provision of the FOI Act by demanding payment of the statutory fee under §29-10b, G.S.

13. The Commission also takes administrative notice of its records and files in the two consolidated cases Docket #FIC 2006-207, Palmenta v. Department of Public Safety et al., and Docket #FIC 2006-239, Palmenta v. Department of Public Safety et al. At the times relevant to those complaints, the Department had adopted the Department of Correction ("DOC") standard for the waiver of fees for indigent inmates. The Commission approved of the Department's use of that standard. However, the Commission dismissed the two consolidated Palmenta cases on the grounds that the complainant had failed to provide proof of his indigence in the form of copies of the complainant's DOC trust account statement for the prior six months.

14. In the consolidated Palmenta cases, the Commission also, contrary to Cook, concluded that the specific fee provisions set forth in §29-10b, G.S., supersede the more general fee provisions set forth in §1-212(a), G.S., *but* that because §29-10b, G.S., is silent as to fee waivers, the fee waiver provision of §1-212(d)(1), G.S., controls.

15. It is necessary for the Commission to choose between the alternative analyses in Cook and the two consolidated Palmenta cases, as the alternative statutory constructions cannot be reconciled.

16. It is concluded that, consistent with Cook, §1-212(d), G.S., on its face only provides a waiver of the fees established in §1-212, G.S., not the waiver of fees provided for in other statutes such as §29-10b, G.S.

17. It is also concluded that to decide otherwise would effectively be to legislate the §1-212(d), G.S., fee waiver into §29-10b, G.S.

18. It is therefore concluded that Cook was decided correctly, and that contrary to the conclusion in the two consolidated Palmenta cases, the fee waiver provision of §1-212(d)(1), G.S., does not apply to the fees for records under §29-10b, G.S.

19. It is therefore concluded that the respondents did not violate the provisions of §§1-210(a) and 1-212, G.S., as alleged, by failing to provide the complainant with a copy of the requested records without prepayment of the statutory fee, as set forth in §29-10b, G.S.

20. Having found no violations of the FOI Act by the respondents it is unnecessary to consider the imposition of a civil penalty.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 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:

Edmundo Mendieta #395180
Cheshire Correctional Institution
900 Highland Avenue
Cheshire, CT 06410

Dora B. Schriro, Commissioner, State of Connecticut,
Department of Emergency Services and Public
Protection; and State of Connecticut,
Department of Emergency Services
and Public Protection
c/o James W. Caley, Esq.
Assistant Attorney General
State of Connecticut,
Office of the Attorney General
110 Sherman Street
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Cynthia A. Cannata
Acting Clerk of the Commission