

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

David Godbout,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-130

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

December 11, 2012

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, January 9, 2013**. 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 December 21, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE December 21, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE December 21, 2012**, 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: David Godbout
Neil Parille, AAG and Stephen R. Sarnoski, AAG
Michael E. Driscoll, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2012-130

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

Respondents

November 28, 2012

The above-captioned matter was heard as a contested case on September 4, 2012 at which times the complainant and the State of Connecticut respondents appeared and presented testimony, exhibits and argument on the complaint. The matter was again heard on October 1, 2012 for the purpose of receiving evidence from the City of Norwich respondents, who were added as parties by the hearing officer, but the complainant did not appear at that hearing. The matter was again heard on November 5, 2012, to give the complainant an opportunity to respond to the evidence produced by the Norwich respondents at the October 1, 2012 hearing, it appearing that the complainant's failure to appear at the October 1, 2012 hearing was due to a mistake and that the respondents would not be unfairly prejudiced by re-opening the hearing.

This matter was consolidated for hearing with Docket #FIC 2012-131, David Godbout v. City of Hartford et al., and Docket #FIC 2012-161, David Godbout v. Department of Emergency Services and Public Protection et al.

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 March 6, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for public records.

3. It is found that the complainant made a request on September 21, 2011 to the respondent City of Norwich to review and inspect eleven categories of documents relating to the City's possession of small arms, chemical agents, body armor, and the like.

4. It is found that the Norwich respondents wrote on September 26, 2011 to the Department of Emergency Management and Homeland Security [now a Division within the Department of Emergency Services and Public Protection ("DEMHS")] asking that DEMHS review the complainant's request and determine under §1-210(b)(19), G.S., whether the disclosure of all or part of the requested records may result in a safety risk.

5. It is found that members of the respondent Commissioner's staff met with various City of Norwich officials, and the Commissioner then wrote to the respondent City Manager on February 27, 2012 that there were reasonable grounds to believe that the release of some of the records may result in a safety risk. Specifically, the Commissioner concluded that:

Disclosure of information with regard to the type and number of specialized weapons that are intended to subdue certain people in order to protect other members of the public, would allow those who may plan violent actions against the city and its residents to calculate how to defend against the city's protective measures, and/or the amount of force that would be necessary to overcome these protective measures.

6. It is found that the respondent City Manager wrote to the complainant on March 5, 2012, informing him that the City would follow the directives of the respondent Commissioner regarding items to be withheld, that the City had no documents responsive to certain of the complainant's requests, and that the City would make available for the complainant's review any existing responsive records that did not fall within the respondent Commissioner's prohibition against disclosure. It is found that the respondent City Manager also provided the complainant with a letter from the Norwich Police Department indicating the number and type of pistols and Tasers it possessed.

7. It is found that the complainant did not respond to the City Manager's offer to make records available for his review during business hours.

8. 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.

9. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

11. Section 1-210(b)(19), G.S., provides that nothing in the FOI Act requires the disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined ... by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency.... Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security

system and the cost and quality of such system, may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel;

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

12. In turn, §1-210(d), G.S., provides in relevant part:

Whenever a public agency ... receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the ... Commissioner of Emergency Services and Public Protection ... of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act If the commissioner, after consultation with the chief executive

officer of the applicable agency ... believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person....


13. It is concluded that the Norwich respondents did not violate the FOI Act as alleged.

14. At the hearing, the complainant sought to challenge the determination by the State of Connecticut respondents that the release of certain information would constitute a safety risk.

15. It is concluded, however, that this Commission has previously considered and approved the respondent Commissioner's directive concerning the complainant's request for information concerning records of municipal weapons in Docket #FIC 2011-595, David Godbout v. Department of Emergency Services and Public Protection and City of Stamford. As that case involved the same request for records by the same complainant, albeit to a different municipality, and the same determination by DESPP, the Commission declines to permit the complainant to relitigate the precise issue decided in that case. While the complainant believes that the Commission's decision in Docket #FIC 2011-595 was affected by error, such a claim is properly addressed through an administrative appeal of that case.

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