

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 2012-265

Commissioner, State of Connecticut,
Department of Emergency Services and Public
Protection, Division of State Police, and State of
Connecticut, Department of Emergency
Services and Public Protection, Division of
State Police,

Respondent(s)

March 7, 2013

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 Thursday, March 28, 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 March 15, 2013**. 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 March 15, 2013**. 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 March 15, 2013**, 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
Terrence M. O'Neill, AAG

2013-03-07/FIC# 2012-265/Trans/wrbp/GFD//CAL

An Affirmative Action/Equal Opportunity Employer

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 2012-265

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

Respondents

March 7, 2013

The above-captioned matter was heard as a contested case on January 28, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above captioned matter was consolidated with Docket #FIC 2012-404, David Godbout v. Resident State Trooper, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety.

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 May 15, 2012 and filed with the Commission on May 16, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request, described in paragraph 16, below. In addition to other relief, the complainant requested the assessment of civil penalties against the respondents.
3. At the start of the contested case hearing on the consolidated matters, the complainant objected to the venue of the hearing and the timeliness of scheduling the hearing under §1-206, G.S. The complainant then moved for a change of venue based on "the lack of authority of the [FOI Commission] to hold a preliminary hearing in this case" and the untimely scheduling of the hearing under §1-206, G.S. In his post-hearing brief, the complainant requested, as a remedy, that the "preliminary hearing" on these matters "be voided in its entirety and a de novo hearing be held before the full Commission."

4. With respect to complainant's objection and motion for the change in venue, he specifically maintains that the contested case hearing on these matters is a "preliminary hearing" under §1-206, G.S., that can only be heard before the full commission and not the hearing officer, for purposes of examining appeals pertaining to executive session. The complainant also maintains that the Commission is without jurisdiction to hold the preliminary hearing on appeals pertaining to records and has "expanded the types of cases that can be afforded a preliminary hearing by including record denials cases, such as is currently before the [FOI Commission] in this case." The complainant further maintains that the proper venue is to hold a hearing before the full Commission rather than two administrative proceedings, which was not intended by the legislature.

5. Section 1-206(b)(1), G.S., provides in relevant part that:

If a notice of appeal concerns an announced agency decision to meet in executive sessions, for a stated purpose, the commission or a member or members of the commission designated by its chairperson shall serve notice upon the parties in accordance with this section and hold a preliminary hearing on the appeal within seventy-two hours after receipt of the notice, provided such notice shall be given to the parties at least forty-eight hours prior to such hearing.

6. It is found that the notice of appeal in this matter was filed on May 15, 2012 and alleges violations under the FOI Act concerning a request to review and inspect records.

7. At the hearing on this matter and in his post-hearing brief in support of the motion for change in venue and timeliness, the complainant concedes that his May 15, 2012 notice of appeal to the Commission pertains solely to the inspection of records and not "executive sessions" of the respondents.

8. It is found, therefore, that the notice of appeal in this matter does not concern an announced agency decision to meet in executive session within the meaning of §1-206(b)(1), G.S.

9. It is found that the proceedings in this matter are not governed by the provisions in §1-206(b)(1), G.S., set forth in paragraph 5, above. It should be noted that such provision merely establishes a procedure for holding an accelerated hearing in certain circumstances. It should further be noted that such provision does not require that the full Commission conduct the hearing.

10. It is concluded that a contested case hearing before a designated hearing officer is the proper venue for adjudicating the complainant's appeal in this matter. Such

bifurcated process is authorized by both the Uniform Administrative Procedure Act, §§4-166 through 4-189g, G.S., and the Commission's legislatively approved regulations.

11. As to the complainant's objection to the timeliness in scheduling the consolidated hearing on these matters, the complainant maintained at the start of the contested case hearing that this appeal, filed May 16, 2012, and the consolidated appeal, Docket #FIC 2012-404, David Godbout v. Resident State Trooper, State of Connecticut, Department of Public Safety; and State of Connecticut, Department of Public Safety, filed July 19, 2012, should have been heard not later than thirty days after receipt of his appeals to the commission and decided not sixty days after hearing the matters pursuant to §1-206, G.S. In his post-hearing brief, the complainant also maintained that the Commission's scheduling of the hearing in his appeals were neither "prompt or with reasonable dispatch" as required by law. The complainant further maintained that the remedy to his objection and motion is to hold a new hearing on the matters before the full Commission.

12. By written motion dated March 13, 2013, the complainant also moved to dismiss the complaint "on the grounds of the lack of jurisdiction in this case caused solely by the [FOI Commission's] inaction and failure to comply with the timely requirements of the Freedom of Information Act [sic]." In such motion, the complainant specifically states that his filing is not "a request or motion to withdraw" and that he would "like the case to move forward but believes the [FOI Commission] has lost jurisdiction."

13. Section 1-206(b)(1), G.S., provides in relevant part that:

Said [FOI] commission shall, after due notice to the parties, hear and decide the appeal within one year after the filing of the notice of appeal. The [FOI] Commission shall adopt regulations in accordance with chapter 54, establishing criteria for those appeals which shall be privileged in their assignment for hearing. Any such appeal shall be heard within thirty days after receipt of a notice of appeal and decided within sixty days after the hearing. (Emphasis added.)

14. It is found that this appeal was filed on May 15, 2012 and was not privileged in its assignment for hearing.

15. Consequently, it is concluded that the Commission has jurisdiction to hear and decide this appeal within one year of May 15, 2012. Accordingly, the complainant's motion to dismiss is denied.

16. It is found that, by letter dated May 7, 2012, the complainant requested that the respondents permit him to inspect the following records:

- a. "[a]ny documents related to any submission of a CCW permit application by the requestor;"
- b. "[a]ll departmental documents that outline policies, procedures, and other information in respect to permitting processes that the agency is involved with;" and
- c. "[a]ll documents produced or received in respect to this FOIA request."

(hereinafter the "requested records").

17. It is found that, by letter dated May 9, 2012, the respondents acknowledged the complainant's request described in paragraph 16, above, and provided the complainant with file number 12-404 to reference his request in future correspondence with the respondents. It is also found that the respondents informed the complainant that he may be charged a fee in connection with his request and that they would notify him when the request was processed.

18. 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.

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

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 . . . (3) receive a copy of such records in accordance with section 1-212.

20. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

21. It is found that to the extent the respondents maintain the requested records, such records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

22. At the hearing on this matter, the complainant withdrew his complaint with respect to the records described in paragraphs 16.a. and 16.c., above. Accordingly, the allegations in the complaint pertaining to such records shall not be further addressed herein.

23. As to the records described in paragraph 16.b., above, the complainant specifically stated that the respondents have not provided him with access to responsive records that should exist. The complainant also stated that he was not satisfied with the search performed by the respondents and that the respondents were not prompt in conducting a diligent search for the records described in paragraph 16.b., above.

24. The respondents contended that they informed the complainant in their letter dated June 6, 2012 that they do not have responsive records that outline policies, procedures, and other information related to the respondents' permitting processes as requested in paragraph 16.b., above. The respondents also contended, that on or about August 3, 2012, they conducted an additional search after receiving notice of the complaint in this matter. The respondents stated that such search included contacting senior staff members of their legal affairs unit as well as staff at their special licensing and firearms unit, who all confirmed that there were no responsive records related to the request described in paragraph 16.b., above. The respondents further contended that the pistol permit statutes themselves clearly outline the process by which a pistol permit is issued.

25. It is found that the requested records described in paragraph 16.b., above, do not exist.

26. It is found that the respondents' June 6, 2012 letter to the complainant, which was sent approximately a month after the complainant's May 7, 2012 letter of request, stated that the respondents were unable to locate any records responsive to the request described in paragraph 16.b., above.

27. It is found that the respondents acted reasonably in providing all applicable files for the complainant's review and inspection, and inviting him to review responsive records maintained by the respondents.

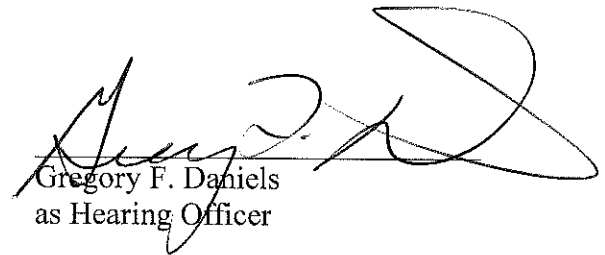
28. It is found that the respondents did not deny the complainant's request to inspect records, and offered the records for the complainant's inspection in a prompt manner.

29. It is concluded, therefore, that the respondents did not violate the FOI Act as alleged by the complainant.

30. Consequently, the Commission declines to consider the complainant's request for civil penalties against the respondents.

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.



Gregory F. Daniels
as Hearing Officer

FIC2012-265/hor/gfd/03072013