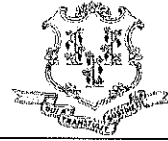


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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-267

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 21, 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 Wednesday, April 10, 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 29, 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 29, 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 29, 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: Edward Tuccio
Terrence M. O'Neill, AAG
cc: Janet K. Ainsworth, Esq.

3/21/13/FIC# 2012-267/Trans/wrbp/VRP//CAL

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Edward Tuccio,

Complainant

against

Docket #FIC 2012-267

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 20, 2013

The above-captioned matter was heard as a contested case on July 26 and August 27, 2012, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The case was consolidated for hearing with Docket #FIC 2012-292, Edward Tuccio v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police 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 May 16, 2012, the complainant appealed to the Commission, alleging that the respondents did not respond to his May 11, 2012 request for public records.
3. It is found that the complainant made a request on May 11, 2012 to the respondents for copies of the following records, all pertaining to Troop A in Southbury:
 - a. Telephone calls received from May 2, 2012 – May 12, 2012;
 - b. All records of duty from May 1, 2012 – May 11, 2012;
 - c. Lieutenants' emails and records from May 1, 2012 – May 11, 2012;

- d. Captains' records and emails from May 2 2012 – May 11, 2012; and
- e. Any and all conversations with anyone regarding anything from May 1, 2012 – May 11, 2012.

4. 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.

5. 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.

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

7. At the hearing, the complainant withdrew the portion of his request described in paragraph 3.e, above.

8. It is found that the respondents did not offer to provide any of the requested records until the August 27, 2012 hearing on this matter, when they offered the complainant a copy of a duty roster in response to the portion of the complainant's request described in paragraph 3.b, above. It is found, however, that the offered duty roster was not for the time period sought by the complainant.

9. It is found that the respondents were, at the time of the August 27, 2012 hearing on this matter, prepared to provide duty rosters responsive to the portion of the

request described in paragraph 3.b., above, by the first week in September, 2012, approximately four months after the request was made.

10. It is found that there are no captains stationed at Troop A, and that therefore there are no records responsive to the portion of the request described in paragraph 3.d, above.

11. It is found that, at the time of the August 27, 2012 hearing in this matter, the respondents had reviewed between ten and fifty lieutenants' emails.

12. It is found that, as of the August 27, 2012 hearing in this matter, the respondents had reviewed approximately 200 of the 2,023 audio files potentially responsive to the complainant's request as described in paragraph 3.a., above, and estimated that they could continue to review approximately 200 audio files per week. One audio file is a single telephone call or broadcast which can be as long as a couple of minutes, with the vast majority lasting 30 to 60 seconds.

13. It is found the respondents expect to redact some exempt information from the requested records before they are provided to the complainant. Although the respondents did not offer specific evidence of exempt information, they generally provided testimony that the records could contain private cell phone numbers, addresses, social security numbers, identities of sexual assault victims, and identities of juveniles.

14. As no specific records have yet been denied to the complainant based upon a claim of exemption, the only issue to be decided is the promptness of the respondents' response.

15. With respect to the general question of promptness, the meaning of the word "promptly" is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

16. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

17. It is found that the volume of audio files requested was very large, but that the volume of the remaining requested records was not particularly large.

18. It is found that a substantial amount of time is required to review the audio files, but that the remaining requested records did not require a particularly large amount of time to review.

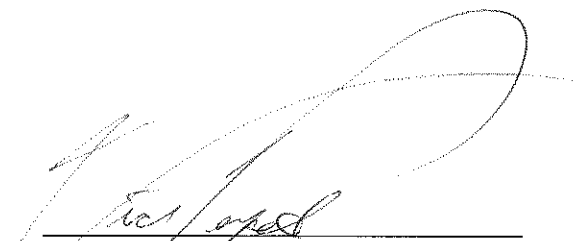
19. The complainant did not present evidence as to the importance of the records to him, or the time by which he needed them, or whether he had expressed any of this information to the respondents.

20. It is found that some delay in providing the records to the complainant was to be expected, but that a four-month delay in providing even the most easily obtained of the records (the duty rosters) was not reasonable under the circumstances.

21. It is concluded that, under the facts and circumstances of this case, the requested records were not provided promptly, and that the respondents therefore violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. If they have not already done so, the respondents shall forthwith provide to the complainant all documents they have reviewed and do not intend to withhold from him.
2. The respondents shall forthwith continue their review of the requested records, and forward any newly reviewed records to the complainant for which they assert no claim of exemption.
3. Henceforth the respondents shall strictly comply with the promptness requirements of §1-210(a), G.S.



Victor R. Perpetua
as Hearing Officer