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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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Deborah Brennan,
Complainant(s)

against

Chief, Police Department, Town of West Hartford; and Police Department, Town of West Hartford,
Respondent(s)

Notice of Rescheduled Commission Meeting

Docket #FIC 2012-405

March 25, 2013

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Thursday, February 21, 2013 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2:00 p.m.** on **Wednesday, April 24, 2013.**

Any brief, memorandum of law or request for additional time, as referenced in the January 15, 2013 Transmittal of Proposed Final Decision, should be received by the Commission on or before April 12, 2013.

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Deborah Brennan
Patrick G. Alair, Esq.

2013-03-25/FIC# 2012-405/ReschedTrans/wrbp/KKR//TAH

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Deborah Brennan,
Complainant(s)
against

Chief, Police Department, Town of West Hartford; and Police Department, Town of West Hartford,
Respondent(s)

Notice of Meeting

Docket #FIC 2012-405

January 15, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 13, 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 February 1, 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 February 1, 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 February 1, 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: Deborah Brennan
Patrick G. Alair, Esq.

2013-1-15/FIC# 2012-405/Trans/wrbp/KKR//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Deborah Brennan,

Complainant

against

Chief, Police Department, Town of West Hartford; and Police Department, Town of West Hartford,

Respondents

Report of Hearing Officer

Docket #FIC 2012-405

January 14, 2013

The above-captioned matter was heard as a contested case on December 11, 2012, at which time the complainant and the respondents appeared 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. It is found that, by letter dated May 1, 2012, the complainant requested to obtain copies of, or access to: "arrest logs" from June 1, 2006 through December 31, 2011.[1]

3. It is found that, by letter dated May 7, 2012, the respondents denied the request, described in paragraph 2, above, stating that, because some of the arrests listed in the logs may have resulted in a judgment of dismissal or a nolle prosequi, and are thereby erased, pursuant to §54-142a, G.S., such information cannot be disclosed. In addition, the respondents noted that such "arrest logs" do not exist prior to July 1, 2007.

4. It is found that, by letter dated June 28, 2012, the complainant reiterated her request for the records, described in paragraph 2, above.

5. It is found that, by letter dated July 12, 2012, the respondents again denied such request.

[1] Although the complainant also requested additional records in her May 1st letter, such records are not the subject of her complaint.

6. By letter dated and filed July 17, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the May 1st request for records, described in paragraph 2, above.

7. 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.

8. 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.

9. 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."

10. It is found that the records responsive to the May 1st request are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that the respondents maintain, since July 1, 2007, a database of information regarding individuals who have been arrested. Such information includes the individual's name, address, date of birth, race, name of arresting officer, the charges, and a description of the charges. It is found that such database also includes information concerning the disposition of some of the criminal cases, but not all. It is further found that, each Monday morning, the respondents provide to the media, via email, a "Press Arrest Log" which is, in essence, a "snapshot" of information from the database as to the previous week's arrests. It is found that, because the Press Arrest Log pertains only to arrests made the previous week, there has been no disposition of any of the charges related to such arrests at the time such information is provided to the media.

12. It is found that members of the media regularly publish certain arrest information contained in the Press Arrest Log in various news publications.

13. Although the complainant describes the records she requested as "arrest logs," it is found that the record she is seeking is a printout from the database of all arrest information, described in paragraph 11, above, dating back to June 1, 2006. She conceded, however, at the hearing in this matter, that she is not entitled to receive information regarding arrests that have resulted in a judgment of dismissal or a nolle prosequi. Nevertheless, she claims that the respondents are required to provide her with a copy of the requested record, with the information pertaining to erased records redacted.

14. At the hearing in this matter, the respondents contended that, because they do not maintain current and/or accurate information regarding the dispositions of all of the arrests listed in the "arrest logs" at issue, they cannot comply with the request, described in paragraph 2, above, without potentially disclosing information about charges that are deemed erased pursuant to §54-142a, G.S. According to the respondents, it would be necessary to conduct "research" in order to determine which arrests ultimately resulted in charges that were dismissed or nolled, and are thereby deemed erased. They argue, therefore, that they are not obligated to provide the requested records to the complainant.

15. Section 54-142a, G.S. provides, in relevant part:

> (a) Whenever in any criminal case…the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased….
> …
> (c)(1) Whenever any charge in a criminal case has been nolled in the Superior Court…if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased….
>
> (c)(2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period…
> …
>
> (e)(1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record…information pertaining to any charge erased under

> any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person…shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records… (emphasis added).

16. At the hearing in this matter, the respondents testified that, in some cases, they receive notification from the court regarding the dispositions of the criminal cases in their database; however, in other cases, they do not. Thus, according to the respondents, their database, with regard to the disposition of criminal cases, is not accurate. In order for the database to be accurate, the respondents testified, they would need to obtain and verify all disposition information for all arrests dating back to July 2006, by putting the individual's name and date of birth into the State Police Records Check system to determine the disposition. But, because this system is not "foolproof," according to the respondents, they then would need to call the court, and verify the disposition. The respondents argued that this process constitutes "research" that they are not required to undertake. Moreover, the respondents noted that their computer system is not capable of searching by conviction information, and that the computer printout of all arrest information, as described in paragraph 2, above, would total approximately 3000 pages.

17. The Commission previously addressed the issue of a police department's responsibility to obtain accurate disposition information before it claims records are erased, and therefore exempt from disclosure, in Torlai v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police, et al., Docket #FIC 2009-770 (September 3, 2012), *appeal pending* Commissioner, Department of Public Safety v. Freedom of Information Commission et al. In that case, the State Police denied the complainant's request for records relating to DUI arrests on the ground that the records were erased, and based such determination solely on a search of the public database maintained by the judicial branch. The Commission concluded that such database was not, in fact, accurate under the circumstances, and that the State Police violated the FOI Act when they denied the request on the ground of erasure without first obtaining accurate disposition information either from the court, or by conducting a search of their own records. The Commission ordered the State Police to obtain such accurate disposition information and thereafter provide all non-exempt records to the complainant.

18. Moreover, the Commission notes that the language of §54-142a(e)(1), G.S., itself appears to place some responsibility on the respondent police department to provide "adequate security measures" to prevent against unauthorized access or dissemination of erased records.

19. In the present case, the respondents claim that the information gathering process, described in paragraph 16, above, would constitute "research." In Wildin v. Freedom of Information Commission, 56 Conn. App. 683, 687 (2000), the Appellate Court concluded that a

records request involves research if the respondents must exercise discretion to determine whether the records sought fall within the request. In Wildin, the complainant requested "all correspondence…to or from the Mayor…and to or from the Town Attorney…from January 1, 1996 to the present." Id. at 684-85. The Commission found that such records were located in at least fifty, and perhaps in over one hundred files, organized by subject matter, and concluded therefore that the respondents would need to conduct "research" in order to locate all such responsive records. Id. at 685. The trial court agreed, but the Appellate Court reversed, noting that the complainant had "specifically identified the records he sought, and there was no analysis required to search for the records." Id. at 686. According to the Court, "a record request that is simply burdensome does not make that request one requiring research." Id. at 687.

20. It is found that the process of obtaining the disposition information required to update the respondent's database, described in paragraph 16, above, so that the respondents may provide non-exempt records to the complainant in response to the request, described in paragraph 2, above, would not constitute "research." It is found that such records are clearly identifiable and would not require the respondents to exercise discretion in order to determine whether or not such records fall within such request. Although the process may be burdensome and time consuming, it does not constitute research, as that term has been defined in Wildin. As the Commission concluded in Torlai, the respondents may not rely on their lack of information regarding the dispositions of criminal cases as a basis to deny the public information about arrests.

21. Based upon the foregoing, it is concluded that the respondents violated the FOI Act by denying the request, described in paragraph 2, above.

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

1. The respondents shall, forthwith, provide the complainant with a copy of the record, described in paragraph 2, above, free of charge.

2. In providing the copy, described in paragraph 1 of the Order, above, the respondents shall redact all information pertaining to records deemed erased by operation of law.

Kathleen K. Ross
as Hearing Officer

FIC 2012-405/hor/kkr/01142013