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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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James Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-728

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)

August 14, 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, September 11, 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 August 30, 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE August 30, 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 August 30, 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: James Torlai
Terrence M. O'Neill, AAG

8/14/13/FIC# 2012-728/Trans/wrbp/KKR/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

James Torlai,

Complainant

against

Docket #FIC 2012-728

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

August 14, 2013

The above-captioned matter was heard as a contested case on June 6, 2013 and July 18, 2013, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2012-727, James Torlai v. 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.

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 October 24, 2012, and filed on October 31, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the order of this Commission in Docket #FIC 2011-700, James Torlai v. Legal Affairs Unit, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection.
3. The Commission takes administrative notice of the final decision referenced in paragraph 2, above. In that decision, the Commission issued the following order:
 1. The respondents are hereby ordered to take all appropriate measures to ensure that the complainant is provided a copy of all non-exempt and non-erased records in response to his November 28, 2011 request,

free of charge, within 10 days of the issuance of this decision¹;

2. The Commission leaves it to the discretion of the respondents to determine the appropriate method of determining whether records are or are not erased or exempt. However, the respondents shall not rely solely on the information available from the Judicial Branch website.
3. The respondents are further ordered to report to this Commission, in writing, whether there are now records subject to the erasure provisions of §54-142a, G.S., that were not subject to erasure at the time of the complainant's November 28, 2011 request.

4. It is found that, as of the date of the hearing in the present matter, the respondents had not provided the complainant with any non-exempt, non-erased records responsive to his November 28, 2011 request, in accordance with paragraph 1 of the order. The complainant argued, at the hearing, that the respondents should have provided such records within 10 days of the September 27, 2012 order and further questioned whether some of the records the respondents continued to claim are exempt from disclosure, are, in fact, exempt.

5. It is found that, of the 73 records at issue in Docket #FIC 2011-700, the respondents concluded that nine such records are non-exempt, non-erased, and subject to disclosure, and that the remainder of such records are exempt from disclosure because they are erased. The respondents stated that they intended to provide copies of the non-exempt, non-erased records to the complainant at the hearing in this matter.

6. With regard to that portion of the order that required the respondents to provide the records within 10 days of the final decision in that case, or by October 11, 2012, it is found that the respondents failed to comply with such order. The respondents offered evidence as to the reasons for their failure to comply with the order, such as a change in staffing in the legal affairs unit, disorganized files, staffing shortages, and the shootings at Sandy Hook Elementary School in Newton that resulted in an increased volume of work for the staff of the legal affairs unit. Although the Commission acknowledges the limitations on resources of state agencies, it is nevertheless astonished that, in the face of a finding of a violation and an order from this Commission to provide records to the complainant within 10 days, the respondents did not provide the complainant with those records until 10 months after the date they were ordered to do so.

7. It is found that the respondents complied with paragraph 2 of the order, described in paragraph 3, above, in that they did not rely solely on the information contained on the Judicial Branch website for their determination whether or not the records at issue were erased or exempt. Rather, it is found that they relied on a previously instituted multi-step process for verifying such

¹ The decision was issued on September 27, 2012.

information, which includes sending the name of the individual who is the subject of each requested record to the State Police Bureau of Identification and obtaining a full "rap sheet" or criminal history record for that individual.

8. It is found that, after a "rap sheet" for an individual is obtained, a paralegal in the legal affairs unit reads through it, and identifies the DUI charge that pertains to the requested records. It is further found that the paralegal then, applying the erasure statutes, makes certain other calculations and determinations in concluding whether or not the records are erased.

9. It is found that, with respect to at least one of the records at issue, the conclusion of the paralegal that such record was erased was erroneous. No evidence was offered at the hearing in this matter that the conclusions reached by the paralegal with regard to any of the records at issue was reviewed by an attorney or other supervisor. It is found that such review is an appropriate measure that the respondents should have taken to ensure that the complainant was provided with all non-exempt, non-erased records. It is therefore found that the respondents failed to prove that they complied with that portion of paragraph 1 of the order that required them to "take all appropriate measures to ensure that the complainant is provided a copy of all non-exempt and non-erased records in response to his November 28, 2011 request." (Emphasis added).

10. With regard to paragraph 3 of the order, it is found that the respondents presented no evidence at the hearing in this matter that they provided a written report to this Commission as described in the order.

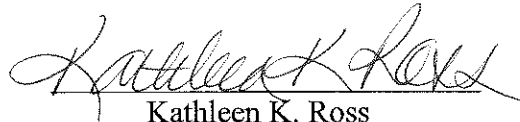
11. Based upon the foregoing, it is concluded that the respondents failed to comply with paragraphs 1 and 3 of the order, described in paragraph 3, above.

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

1. Forthwith, the respondents shall ensure that an attorney or other supervisor reviews the legal conclusions made by their paralegal in this case and in connection with all records requests made pursuant to the FOI Act. The respondents shall immediately after such review, provide the complainant with copies, free of charge, of all non-exempt, non-erased records responsive to his November 28, 2011 request, if they have not already done so.

2. Forthwith, the respondents shall report to the Commission, in accordance with paragraph 3 of the order, described in paragraph 3 of the findings above, and provide a copy of same to the complainant.

3. The respondents are advised that the failure to comply with an order of this Commission may result in the referral to the appropriate state's attorney for criminal prosecution pursuant to §1-240, G.S.

A handwritten signature in cursive script, appearing to read "Kathleen K. Ross". The signature is written in black ink and is positioned above a horizontal line.

Kathleen K. Ross
as Hearing Officer

FIC 2012-728/hor/kkr/08142013