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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 2013-066

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)

December 31, 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, January 22, 2014**. 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 January 10, 2014**. 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 January 10, 2014**. **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 January 10, 2014**, 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, Esq.

12/31/13/FIC# 2013-066/Trans/wrbp/GFD//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 2013-066

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

December 31, 2013

The above-captioned matter was heard as a contested case on September 19, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies within the meaning of §1-200(1), G.S.
2. It is found that, by letter dated December 23, 2012, the complainant requested the following records related to case number CFS 1100676606 from the respondents:

- a) “[a]ny press releases or similar reports made available to the public;
- b) [a]ll breath test results and urine test results;
- c) [a]ll Department of Motor Vehicles A-44 forms;
- d) [t]he name of the person arrested;
- e) [t]he date, time and place of the arrest; and
- f) [a] list of charges.”

(the “requested records”).

3. It is found that, by letter dated January 2, 2013, the respondents’ Legal Affairs Unit acknowledged receipt of the complainant’s request described in paragraph 2, above, and indicated that the request would be processed upon receipt of the \$16.00 fee authorized by §29-10b, G.S., which provides, in relevant part, that:

The Commissioner of Public Safety shall charge the following fees for the item or service indicated:

(1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, six dollars, and on and after July 1, 1993, sixteen dollars.

(2) Each copy of an accident or investigative report, six dollars, and on and after July 1, 1993, sixteen dollars.

4. It is found that, by letter dated January 7, 2013 with attached check, the complainant submitted the required \$16.00 search/copy fee to the respondents. It is also found that in such letter the complainant stated that he believed that §14-227, G.S., requires the respondents to provide copies of records related to DUI arrests to the public and specifies that the respondents charge a per page fee in accordance with the FOI laws. The complainant further stated that §14-227, G.S., does not allow the respondents to charge a fee to search for the requested records.

5. It is found that, by letter dated January 28, 2013, the respondents' Legal Affairs Unit informed the complainant that the investigation, which is the subject of the requested records, was still pending. It is also found that the respondents' legal affairs office informed the complainant that they would forward the requested records as soon as they are available and their public disclosability are determined. The respondents' Legal Affairs Unit further informed the complainant that they would forward a copy of the related press release as soon as the respondents obtain a copy of such record.

6. By letter dated February 6, 2013 and filed with the Commission on February 13, 2013, the complainant alleged that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide him with copies of the 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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a)(1), G.S., provides in relevant part that:

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

10. It is found that the respondents maintain the records described in paragraph 2, above, and it is concluded, therefore, that such records are "public records" within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S., and that copies of such records must be provided in accordance with §§1-210(a), and 1-212(a), G.S., unless the records, or portions thereof, are exempt from disclosure.

11. It is found that, by letter dated February 6, 2013, the respondents' Legal Affairs Unit provided the complainant with a copy of the press release related to case number CFS 1100676606.

12. It is also found that, by letter dated February 28, 2013, the complainant informed the respondents that while they provided him with a copy of the press release, they did not satisfy his request because the respondents failed to provide the information required by §§1-215 and 14-227, G.S., or the FOI laws.

13. At the hearing on this matter, the respondents contended that they provided the complainant with a copy of the press release related to case number CFS 1100676606 in accordance with §1-215, G.S. The respondents also contended that they withheld additional records responsive to the complainant's request described in paragraph 2, above, pursuant to §1-215, G.S., since such records pertained to a pending criminal prosecution or investigation. The respondents specifically stated that they were not claiming exemption for the records at issue pursuant to §1-210(b)(3), G.S. The respondents further contended that, as of June 28, 2013, all records related to case number CFS 1100676606 have been erased pursuant to §54-142a, G.S.

14. With respect to the respondents' claim that at the time of the complainant's request, the records described in paragraph 2, above, related to cases deemed "pending" by the respondents, §1-215, G.S., provides as follows:

(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure

of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested. (Emphasis supplied).

(b) For the purposes of this section, "record of the arrest" means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

15. It is found that at the time of the complainant's December 23, 2012 request, the charges against the subject of case number CFS 1100676606 were still pending, and that therefore no records relating to the charges had been erased at that time.

16. It is concluded, however, that §1-215, G.S., does not exempt records from public disclosure under the FOI Act, but rather mandates that, at a minimum, certain information about arrests must be disclosed. In instances where an agency seeks to withhold records not mandated to be disclosed pursuant to §1-215, G.S., such public agency must prove that an exemption applies to such other records. See, e.g., James Torlai v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police; and State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 2009-770.

17. Accordingly, it is concluded that the records identified in paragraph 2, above, related to cases deemed "pending" by the respondents, are not exempt from mandatory disclosure by virtue of §1-215, G.S.

18. It is therefore concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with copies of the records that were withheld pursuant to §1-215, G.S.

19. With respect to the respondents' claim that the records described in paragraph 2, above, have been erased, §54-142a, G.S., provides in relevant part:

(a) Whenever in any criminal case, on or after October 1, 1969, 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 upon the expiration of the time

to file a writ of error or take an appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken. Nothing in this subsection shall require the erasure of any record pertaining to a charge for which the defendant was found not guilty by reason of mental disease or defect or guilty but not criminally responsible by reason of mental disease or defect.

...
(c)(1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, 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

...
(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,* upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section
[Emphasis added.]

20. It is found that the complainant is neither the accused, within the meaning of §54-142a(a), nor the subject of the records, within the meaning of §54-142a(e), G.S.

21. It is found that on July 9, 2013, the respondents sent a request through the State Police Bureau of Identification ("SPBI"), for a status report on case number CFS 1100676606, which is the subject of the requested records. It is also found that on the same day, the SPBI report was completed and indicated that all of the pending charges related to case number CFS 1100676606 were erased on June 28, 2013.

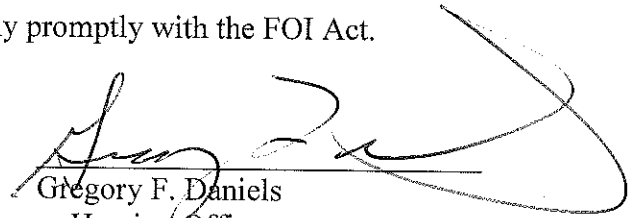
22. It is concluded that the police and criminal records pertaining to such charges against the accused are deemed to be erased, within the meaning of §54-142a, G.S. It is found, therefore, that the respondents are prohibited from disclosing such information to the complainant.

23. It is concluded, however, that the respondents violated §1-210(a), G.S., by failing to provide copies of the requested records at the times they were requested before such records were erased, pursuant to §54-142a(e), G.S.

24. Having concluded that the requested records are now erased within the meaning of §54-142a, G.S., it is unnecessary to address the claim of the complainant that he is entitled to get copies of DUI records related to case number CFS 1100676606 pursuant to §14-227, G.S.

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

1. Henceforth, the respondents shall comply promptly with the FOI Act.



Gregory F. Daniels
as Hearing Officer