



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2013-757

Reuben F. Bradford, Commissioner, State of Connecticut,
Department of Emergency Services and Public Protection;
Christine P. Plourde and Janet K. Ainsworth, State of
Connecticut, Department of Emergency Services and Public
Protection, Legal Affairs Unit; and State of Connecticut,
Department of Emergency Services and Public Protection
Respondent(s)

August 26, 2014

Transmittal of Proposed Final Decision

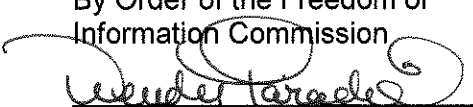
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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 24, 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 September 12, 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 September 12, 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 September 12, 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


Wendy Paradis
Acting Clerk of the Commission

Notice to: Edward Peruta
Stephen R. Sarnoski, Esq.

2014-08-26/FIC# 2013-757/Trans/wrbp/TCB/CAL

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FREEDOM OF INFORMATION COMMISSION

In The Matter of a Complaint by

Report of Hearing Officer

Edward Peruta,

Complainant

against

Docket #FIC 2013-757

Reuben F. Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; Christine P. Plourde and Janet K. Ainsworth, State of Connecticut, Department of Emergency Services and Public Protection, Legal Affairs Unit; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondents

August 20, 2014

The above-captioned matter was heard as a contested case on July 30, 2014, at which time the complainant and the respondents appeared, stipulated to certain facts 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 e-mail sent December 5, 2013, the complainant renewed his July 26, 2013 request to the respondents for access to the “complete, extracted DESPP database of email addresses of active Firearm Dealers in the State of Connecticut to the current date.”
3. It is found that by e-mail sent December 5, 2013, the respondents informed the complainant that his request was denied claiming “privacy and security concerns expressed by the federal firearms licensees, many of whom operate their businesses from their homes.”

4. By e-mail dated December 6, 2013, the complainant appealed to this Commission alleging that the respondents violated §§1-210(a), and 1-212(a), G.S., of the Freedom of Information ("FOI") Act by failing to provide him prompt access to inspect certain records. The complainant requested that the maximum civil penalty be imposed against the respondents.

5. 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.

6. 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 . . . Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

7. It is found that the requested records are public records within the meaning of §§1-200(5), and 1-210(a), G.S.

8. At the hearing on this matter, the complainant contended first, that the respondents violated the prompt compliance requirements of the FOI Act in that they deliberately delayed addressing his July 26, 2013 request because they view him as a serial requester not deserving the same deference as other requesters and therefore, made responding to his requests a low priority. Second, he contended that the respondents were in violation of the disclosure provisions of the FOI Act for denying his request notwithstanding the fact that they knew they were required to comply with it.

9. With respect to the complainant's first contention, §1-206(a), G.S., provides in relevant part that:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within .

four business days of such request... Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

10. Section 1-206(b)(1), G.S., provides in relevant part, as follows:

Any person denied the right to inspect or copy records... may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed within thirty days after such denial. . . .

11. At the hearing in this matter, the complainant testified, and it is found, that his allegations regarding the lack of prompt compliance is limited to the time period between July 26, 2013 and December 5, 2013.

12. It is found that with respect to the complainant's July 26, 2013 request, the respondents were required under the Act to either provide the requested records promptly or provide a written denial of the request by August 1, 2013. It is found that the complainant had not received either by August 1, 2013 and that any complaint he had with respect to the July 26, 2013 request should have been filed on or before August 31, 2013. Therefore, it is found that this Commission lacks jurisdiction to hear that portion of the complainant's appeal alleging a failure of the respondents to promptly address his July 26, 2013 request because his complaint in that regard was not timely filed within the meaning of §1-206(b)(1), G.S.¹

13. With respect to the complainant's allegation that the respondents violated the disclosure provisions of the FOI Act by denying his December 5, 2013 request, the respondents contended that because some of the e-mails contain the name of the dealer (either first initial and last name or their full first and last name), they are precluded from disclosing those e-mails pursuant §29-28(d), G.S. The respondents further contended that some of the dealers objected to the disclosure of their e-mails citing privacy and security concerns particularly in the case of those dealers who operate their businesses from their homes.

14. It is found that, there is no exemption or exception within the FOI Act, and the respondents did not claim one, that would permit the respondent Commissioner to withhold the e-mail addresses requested by the complainant in this case based on "privacy concerns."

15. With respect to the "safety and security concerns," it is found that the respondents attempted to have the Commissioner of the Department of Administrative

¹ Notwithstanding the fact that the respondents did not raise an objection to the Commission's jurisdiction over the July 26, 2013 request, the Commission does so sua sponte.

Services review the complainant's request pursuant to §1-210(b)(19), G.S., but were turned away by that office which declined to conduct any such review.²

16. It is found that there is no other applicable exemption, nor did the respondents claim one, that would permit them to withhold the requested e-mails based on a "safety and security" concern.

17. With respect to the respondents' claim that the e-mail addresses that contain the name of the dealer are exempt from disclosure pursuant to §29-28(d), G.S., that section provides in relevant part that:

Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person issued a permit to sell at retail pistols and revolvers pursuant to subsection (a) of this section or a state or a temporary state permit to carry a pistol or revolver pursuant to subsection (b) of this section, or a local permit to carry pistols and revolvers issued by local authorities prior to October 1, 2001, shall be confidential and shall not be disclosed, except (1) such information may be disclosed to law enforcement officials acting in the performance of their duties, (2) the issuing authority may disclose such information to the extent necessary to comply with a request made pursuant to section 29-33 for verification that such state or temporary state permit is still valid and has not been suspended or revoked, and the local authority may disclose such information to the extent necessary to comply with a request made pursuant to section 29-33 for verification that a local permit is still valid and has not been suspended or revoked, and (3) such information may be disclosed to the Commissioner of Mental Health and Addiction Services to carry out the provisions of subsection (c) of section 17a-500.

18. The complainant argued that the language of the statute precludes the disclosure of the name and residential address together but not the name or the residential address separately. He argued that because the e-mails would only disclose the name of a

² Section 1-210(b)(19), G.S., provides in relevant part that "[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined ... by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency"

dealer and not their residential address, he should have been provided with the responsive e-mails. The complainant also argued that if followed to its logical conclusion, the respondents' interpretation of §29-28(d), G.S., would mean that no one could publish, or otherwise disclose, under any circumstances, the name of a firearms dealer. The complainant also contended that because the federal government has already published the names of those dealers on its website, they are already in the public view and denying him access to the e-mails does not protect the names of those dealers from being publicly known.

19. The confidentiality provisions of §29-28(d), G.S., have been reviewed by this Commission in prior decisions. In Docket #FIC2012-032, Edward Peruta and American News and Information Services, Inc., v. Reuben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; Thomas Hatfield, Legal Affairs, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection, this Commission concluded that the respondents did not violate the FOI Act by redacting the names of applicants for pistol permits from the records they provided to the complainants but clarified that §29-28(d), G.S., does not exempt from disclosure the names of people whose applications were denied and who have not appealed such denials.

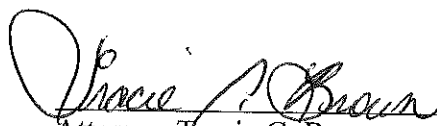
20. Notwithstanding the complainant's arguments, it is concluded that §29-28(d), G.S., applies in this case and precludes the respondents from disclosing the names and the residential addresses, both together and separately. It is concluded that the respondents did not violate the FOI Act by not disclosing the e-mail addresses of those with either the first initial and last name or the full first and last name of the dealers in the address.

21. However, it is concluded that the respondents violated the disclosure provisions of §1-210(a), G.S., by failing to provide the complainant with access to inspect the remaining e-mail addresses responsive to the complainant's request.

22. The complainant's request for a civil penalty against the respondents will not be considered.

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 all e-mail addresses responsive to his request that do not contain either the name, whether first, last or both, in the address.



Attorney Tracie C. Brown
as Hearing Officer