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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

David Taylor,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-303

Chairperson, State of Connecticut, Board of Pardons & Paroles; and State of Connecticut, Board of Pardons & Paroles,

Respondent(s)

February 3, 2015

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, February 25, 2015**. 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 13, 2015**. 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 February 13, 2015**. **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 13, 2015**, 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: David Taylor
Steven R. Strom, Assistant Attorney General

2015-02-03/FIC# 2014-303/Trans/wrbp/KKR/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Taylor,

Complainant

against

Docket #FIC 2014-303

Chairperson, State of Connecticut,
Board of Pardons and Paroles; and
State of Connecticut, Board of
Pardons and Paroles,

Respondents

January 5, 2015

The above-captioned matter was heard as a contested case on December 5, 2014, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 April 21, 2014, the complainant made a request to the respondents for records containing the following information:
 - a. the number of aliens declared, stipulated or determined parole eligible at 50% of imposed sentence under CGS sec 54-125d; and
 - b. the number of intake interviews and or hearings held under the statute for each individual year since its enactment.
3. By letter of complaint dated May 12, 2014, and filed May 14, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the request described in paragraph 2, above.

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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

5. 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 1-212.

6. 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.”

7. It is found that upon becoming aware of the request, described in paragraph 2, above, the respondents conducted a thorough search for such records. It is further found that the respondents maintain no records responsive to such request.

8. At the hearing in this matter, the respondents argued that a civil penalty should be imposed against the complainant, pursuant to §1-206(b)(2), G.S., for filing the instant appeal frivolously and for the purpose of harassment.

9. Section 1-206(b)(2), G.S., provides, in relevant part that:

[i]f the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing... the commission may, in its discretion, impose...a civil penalty of not less than twenty dollars nor more than one thousand dollars.

10. It is found that the complainant previously requested records pertaining to deportations under §54-125d, G.S., from the respondents, which request was the subject of

Docket #FIC 2013-718, David Taylor v. Chairperson, State of Connecticut, Board of Pardons and Paroles; and State of Connecticut, Board of Pardons and Paroles (August 13, 2014) (“Taylor I”). The Commission takes administrative notice of the record and final decision in that case.

11. In Taylor I, the Commission found that the respondents did not maintain any records responsive to the complainant’s request for records of “the number of aliens deported under §54-125d since its enactment;” “the number of parole hearings held at 50% parole eligibility under the statute;” and “the number of parole hearings held at any other percentage pardon eligibility under the statute.” (Emphasis added). It is further found that the record in that case shows that the respondents explained to the complainant that the reason there are no records pertaining to deportations, or hearings on deportations, is because §54-125d, G.S., had, as of the date of the request in that case, never been used to deport anyone. According to the respondents, the complainant therefore knew that there would be no records responsive to the request at issue in this case, and that therefore he filed this complaint frivolously.

12. The complainant argued that the request in the instant case is different from the request in Taylor I, in that it seeks the number of aliens determined to be deportable, as opposed to the number actually deported. According to the complainant, the appeal in this case was not frivolous and he had no intent to harass the respondents.

13. It is found that the request in this case is slightly different from the request in Taylor I, and that it is possible that during the intervening time between the two requests, aliens might have been deported under §54-125d, G.S., resulting in responsive records. Accordingly, it is found that the appeal was not taken frivolously and solely for the purpose of harassing the respondents.

14. Accordingly, the request for the imposition of a civil penalty against the complainant is denied.

15. Based upon the above findings of fact, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.



Kathleen K. Ross
As Hearing Officer