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FREEDOM OF INFORMATION



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David Grant,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-383

Chief, Police Department, City of Norwich; Police
Department, City of Norwich; and City of Norwich,
Respondent(s)

March 19, 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, April 8, 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 March 27, 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 March 27, 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 March 27, 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 Grant
Michael E. Driscoll, Esq. & Kimberly Carlson McGee, Esq.
cc: Craig Washington

2015-03-19/FIC# 2014-383/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 Grant,

Complainant

against

Docket #FIC 2014-383

Chief, Police Department,
City of Norwich; and Police
Department, City of Norwich,

Respondents

February 19, 2015

The above-captioned matter was heard as a contested case on January 5, 2015, and February 5, 2015, at which times 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 separate letters dated May 27, 2014, the complainant requested from the respondents:
 - a. all records pertaining to his arrest on December 10, 2012, including arrest warrants, witness statements, audio recordings, photographs, and investigation and ballistics reports, as well as records of any “funds given to witnesses with the intention of securing information about [his criminal case], and all records pertaining to any “deals” given to witnesses in [his criminal case]; and
 - b. all reports of any internal affairs investigations of five named police officers of the respondent police department, and all retirement plans for these individuals; and,

- c. the policy of the Norwich Police Department pertaining to case incident reports, informants, interviews, investigation and disposal of records.

3. By letters of complaint, each dated June 12, 2014, and filed June 16, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the requests 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 the records responsive to the requests, described in paragraph 2, above, are public records.

8. It is found that, by letter dated June 3, 2014, the respondents acknowledged receipt of the requests, described in paragraph 2, above, and informed the complainant that a search for records would be conducted. The respondents further informed the complainant that witness statements are exempt from disclosure, and that they do not maintain any records of any retirement plans.

9. It is found that, as of the date of the hearing in this matter, the complainant had not received any records responsive to his requests.

10. At the hearing in this matter, the respondents claimed that the records pertaining to the complainant's arrest, responsive to the request described in paragraph 2.a., above, are exempt from disclosure pursuant to the Supreme Court's decision in Commissioner, Department of Public Safety v. Freedom of Information Commission, 312 Conn. 513 (2014) ("Commissioner").

11. In Commissioner, the Supreme Court ruled that all records pertaining to the arrest of a person are exempt from disclosure during the pendency of the criminal prosecution of such person, except for the "record of the arrest," described in §1-215, G.S.¹

12. It is found that the criminal prosecution of the complainant was pending at the time of the hearing in this matter, and that the arrest records requested by the complainant pertain to such criminal prosecution. It is further found that the complainant did not request "the record of the arrest."

13. It is concluded, based upon the foregoing, that the arrest records, described in paragraph 2.a., above, are exempt from disclosure under the FOI Act.

14. With regard to the request, described in paragraph 2.a., above, for records of any "funds" and "deals" provided to witnesses, it is found that the respondents do not maintain such records.

15. Accordingly, it is concluded that the respondents did not violate the FOI Act with regard to the request, described in paragraph 2.a, above.

16. With regard to the requests, described in paragraph 2.b, and 2.c, above, it is found that the respondents, prior to the January 5th hearing in this matter, had not conducted a search for such records. Therefore, the hearing officer continued the hearing to permit the respondents to conduct a search for such records.

17. It is found that, after the January 5th hearing in this matter, the respondents conducted a search for records responsive to the request, described in paragraphs 2.b., and 2.c, above, and that they located reports of internal affairs investigations pertaining to four of the five officers whose names the complainant listed in his request. At the February 5th hearing in this matter, the respondents claimed that certain information contained in such reports, such as social security numbers, home addresses and dates of birth, were exempt from disclosure, pursuant to §1-210(b)(2), G.S. The complainant did not contest such redactions, and the respondents represented that they would provide a redacted copy of these reports to the complainant.

18. It is found that the respondents also located a retirement plan responsive to the request described in paragraph 2.b, above. The respondents claimed no exemption for such record, and represented that they would provide a copy of it to the complainant.

¹ Section 1-215(b) defines the "record of the arrest" as (1) the name and address of the person arrested, the date, time and place of 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.

19. It is further found that the respondents located a policy responsive to the request described in paragraph 2.c, above. The respondents claimed no exemption for such record and represented that they would provide a copy of it to the complainant.

20. At the hearing in this matter, the respondents offered little explanation for the delay in searching for, and providing copies of, the records described in paragraphs 2.b and 2.c, above, to the complainant. The only evidence presented regarding the almost nine month delay, was the testimony of Sergeant Powers, on behalf of the respondents, who stated that he took over the responsibility for responding to FOI requests in the fall of 2014 and that it took some time to "get up to speed."

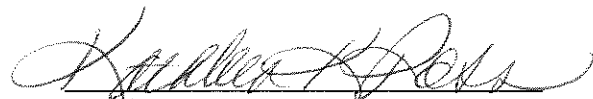
21. It is found that the respondents failed to promptly provide copies of the records described in paragraphs 2.b and 2.c, above, to the complainant.

22. Accordingly, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S., with regard to the requests described in paragraphs 2.b and 2.c, above.

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

1. If they have not already done so, the respondents shall immediately provide a redacted copy of the internal affairs investigation reports, as described in paragraph 17 of the findings, above, and unredacted copies of the retirement plan and policy, described in paragraphs 18 and 19 of the findings, above, to the complainant.

2. Henceforth, the respondents shall strictly comply with the promptness provisions of the FOI Act.



Kathleen K. Ross
As Hearing Officer