



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2014-402

Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; City of Bridgeport; Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction,

Respondent(s)

April 1, 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 22, 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 April 10, 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 April 10, 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 **fifteen (15) copies** be filed **ON OR BEFORE April 10, 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: Ramon Lopez
Greg M. Conte, Esq., James Neil, Esq.
cc: Craig Washington

2015-04-01/FIC# 2014-402/Trans/wrbp/LFS/VDH

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Ramon Lopez,

Complainant

against

Docket #FIC 2014-402

Chief, Police Department, City of
Bridgeport; Police Department, City of
Bridgeport; Commissioner, State of
Connecticut, Department of Correction;
and State of Connecticut, Department of
Correction,

Respondents

April 1, 2015

The above-captioned matter was heard as a contested case on January 23, and March 5, 2015, at which times the complainant and 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 et al, 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 on June 16, 2014, the complainant requested records from the Bridgeport respondents concerning his criminal matter in 2002.
3. By letter of complaint filed June 25, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the copies he requested.
4. Section 1-200(5), G.S., defines "public records" as follows:

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, ... 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:

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 ... receive a copy of such records in accordance with the provisions of section 1-212.

6. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

7. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that the complainant requested records concerning six files with the following docket numbers: O2D-194, O2D-128, O20202, O200 30-252, O2-01546, and O20-0180.

9. It is found that the Bridgeport respondents’ attorney came to the first hearing in this matter with approximately 155 pages of responsive records.

10. It is found that the attorney did not bring any witnesses to the hearing, but represented to the hearing officer that the responsive records had been sent to the Department of Correction for their review and then for delivery to the complainant.

11. Because the complainant had not yet received any copies of records, it was surmised that the Department of Correction had not yet performed its review for exemption pursuant to §1-210(b)(18), G.S. Therefore, on January 30, 2015, the Commissioner, State of Connecticut, Department of Correction and State of Connecticut, Department of Correction (collectively, the “DOC respondents”) were added as respondents, and the case caption was amended accordingly.

12. The DOC respondents appeared at the second hearing in this matter, with a witness. It is found that the DOC respondents had not received the responsive records from the Bridgeport respondents. It is found that the attorney for the Bridgeport respondents erred, as he admitted, when he reported that such records had been sent to the DOC respondents.

13. It is found that at the time of both hearings in this matter, the DOC respondents did not maintain the requested records. It is concluded, therefore, that the DOC respondents did not violate the FOI Act, and the matter is dismissed as to all DOC respondents.

14. It is found that at some point before the first hearing in this matter, the Bridgeport respondents had gathered the records but were holding them pending payment by the complainant for the copies.

15. It is found that the complainant attempted to contact the Bridgeport respondents' attorney to tell him that if the attorney would provide him with an inventory of responsive records and a redaction log detailing the claimed exemptions, he would not need a hearing in this matter. It is found, however, that the complainant did not receive either an inventory or a log from the Bridgeport respondents.

16. At the first hearing in this matter, the complainant challenged the scope of the Bridgeport respondents' search for responsive records. In particular, the complainant was concerned about the location of a potentially exculpatory surveillance videotape that the complainant testified was seen by witnesses during the investigation and was referenced in the investigation reports, but was not logged into evidence. The respondents' attorney reported that the records keeper for the respondent police department showed him the investigation file and the evidence in the property room. It is found that such search produced the approximately 155 pages referenced in paragraph 9, above, but did not produce the videotape sought by the complainant.

17. At the close of the first hearing, the Bridgeport respondents were instructed to return for the second hearing with a witness who could testify in greater detail about the search for records responsive to all of the docket numbers cited by the complainant. The respondents were also instructed to create a redaction log describing what records they sought to withhold from disclosure and the exemption or exemptions on which they relied.

18. The Bridgeport respondents returned to the second hearing in this matter again without a witness. Instead, their attorney produced an affidavit from a detective for the respondents who is responsible for retrieving files from the police department in response to FOI requests. It is found that the respondents did not provide a copy of such affidavit to the complainant in advance of the hearing.

19. It is found that the detective's affidavit stated that he contacted the respondents' record room clerk, who searched for records concerning four of the docket numbers provided by the complainant. It found that the affidavit stated that the clerk could not locate three of the four files, but the affidavit provided no evidence as to the scope of the search.

20. With respect to the fourth docket number (O2D-194), it is found that the affidavit stated that the detective "located" a video recording of the crime scene. It is found that the respondents submitted no testimony as to whether this is the surveillance video sought by the complainant, as there is no evidence in this matter that anyone actually viewed the discovered "crime scene" recording.


21. With respect to copies of the investigation files, the respondents' attorney stated that witness statements, dates of birth, addresses, and phone numbers would be redacted from any

copies of records provided to the complainant. It is found, however, that the respondents failed to create a log of what information was withheld.

22. It is found that the respondents failed to prove that they conducted a diligent and prompt search for all of the records requested by the complainant in this matter.

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

1. The matter is dismissed as to the DOC respondents only.
2. Within 21 days of the notice of final decision in this matter, the Bridgeport respondents shall undertake a thorough search for records responsive to all of the docket numbers specified by the complainant in paragraph 8 of the findings of fact, above.
3. Within 28 days of the notice of final decision in this matter, the Bridgeport respondents shall execute an affidavit by the person or persons who performed such search, detailing the scope of the search and its results.
4. Within 42 days of the notice of final decision in this matter, the Bridgeport respondents shall forthwith complete a redaction log of all responsive records, which log shall include a general description of each record withheld and the exemption relied upon.
5. The respondents shall forthwith provide a copy of such redaction log and all affidavits to the complainant, free of charge. The respondents shall forthwith also provide a copy of the redaction log, along with a copy of all non-exempt responsive records to the complainant, free of charge, via the Commissioner of the Department of Correction for review pursuant to §1-210(b)(18), G.S.



Lisa Fein Siegel
as Hearing Officer