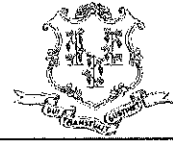




FREEDOM OF INFORMATION



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 2014-449

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)

June 17, 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, July 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 June 26, 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 June 26, 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 June 26, 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: James Torlai
James Caley, Esq.

2015-06-17/FIC# 2014-449/Trans/wrbp/CPH/TCB/CAL

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 2014-449

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,

Respondents

June 17, 2015

The above-captioned matter was heard as a contested case on May 5, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

For purposes of the hearing, this matter was initially consolidated with Docket #FIC2014-510; James Torlai v. 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. However, the complainant withdrew that complaint and this matter was then consolidated with Docket #FIC 2014-708; James Torlai v. 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. However, at the request of the respondents and with the consent of the complainant, the cases were bifurcated and therefore only the above-captioned case was heard on May 5, 2015.

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 May 3, 2013, the complainant made a request to the respondents for "information" related to the following:

- a. "All DUI arrests made by L-Troop during the month of June 2012;" and
- b. "Any DUI arrests processed by L-Troop during the month of June 2012."

The complainant added that for each arrest he wanted the name and address of the person arrested, a list of all charges, a report of the arrest, and all test results related to the DUI charges.

3. It is found that the complainant continued to pursue his request and after informing the respondents, by letter dated July 4, 2014, that their compliance was unsatisfactory, the complainant appealed to this Commission, by letter dated July 11, 2014 and filed on July 14, 2014, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records he requested promptly and by "withholding records illegally."

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 section 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 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 requested records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. Section 52-142a, G.S., which is Connecticut's erasure statute, 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....

9. Section 54-142a(e), G.S., provides in relevant part:

...any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record ...information pertaining to any charge erased under any provision of this section....[Any] person charged with the retention and control of such records ... shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records...

10. For purposes of §54-142c, G.S., a "criminal justice agency" is defined as including "any . . . government agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice."

11. It is found that the respondent department is a criminal justice agency for purposes of §54-142c, G.S.

12. It is found that the following is the series of correspondences that occurred over a period of approximately two years from the date of the complainant's May 3, 2013 records request:

- a. by letter dated May 7, 2013, the respondents acknowledged receipt of the complainant's request;
- b. by letter dated February 3, 2014, the complainant informed the respondents that his request was still outstanding and reiterated his request;

- c. by letter dated February 10, 2014, the respondents informed the complainant that they were actively working on his request;
- d. by letter dated May 27, 2014, the complainant informed the respondents that his request was still outstanding and reiterated his request again;
- e. by letter dated June 21, 2014, the respondents provided the complainant with 14 records responsive to his request;
- f. by letter dated July 4, 2014, the complainant informed the respondents that some of the records provided were illegible and they had not provided all records responsive to his request. It is found that he requested that legible records be provided along with the missing responsive records.
- g. by letter inadvertently dated June rather than July 21, 2014,¹ the respondents provided 2 more records responsive to the complainant's request;
- h. by e-mail dated August 5, 2014, the respondents provided the complainant with one additional responsive record;
- i. by letter dated April 18, 2015, the complainant informed the respondents, among other things, that he believed that he had not been provided with all of the records responsive to his request; and
- j. at the May 5, 2015 hearing on this matter, the respondents provided the complainant with yet another record responsive to his request.

13. It is found that there were records related to a total of 21 arrests (hereinafter "arrest records") that were responsive to the complainant's records request.

14. It is found that by the time the respondents complied with the complainant's request, 15 of the 21 arrest records had been erased pursuant to §54-142a and were not provided to the complainant pursuant to §54-142a(e), G.S.

¹ The parties stipulated at the hearing that the letter should have been dated July 21, 2014.

15. It is found that the respondents provided the complainant with responsive records related to 6 of those arrests and that those records are the only responsive records related to those 6 arrests maintained by the respondents.

16. However, it is found that, at the time of the complainant's May 3, 2013 request, none of the requested records had been erased.

17. At the hearing on this matter, the complainant contended the following:

- a. that provision of the records was not prompt;
- b. that the respondents are erroneously retroactively applying the erasure provisions; and
- c. that the respondents' provision of illegible records is not in compliance with the disclosure provisions of the FOI Act.

18. With respect to the complainant's contention described in paragraph 17(a), above, the respondents testified and it is found that:

- a. all records requests are complied with by the legal affairs unit of the respondent department;
- b. the breadth of the legal unit's responsibilities is vast and includes providing legal support to approximately 1,700 managers and employees, the Office of the Attorney General and private counsel handling agency matters as well as responding to the hundreds of records requests it receives a year;
- c. the legal unit is understaffed (a total of 7 when fully staffed) for the amount of work it has;
- d. the staff was overwhelmed with requests and special projects related to the Sandy Hook tragedy during the time it was working to comply with the complainant's request; and
- e. the complainant himself made 42 other records requests during those years to which the legal affairs unit was working to respond.

19. It is also found that the legal affairs unit has to rely on other units or divisions to search for and forward responsive records to it and that it began its efforts to compile the records from those other agencies as early as May 20, 2013.

20. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

21. Weighing all the factors related to the request, it is found that the respondents have not unduly delayed compliance with the complainant's request in this case and that they did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

22. With respect to the complainant's allegation described in paragraph 17(b), above, it is found that pursuant to the provisions of §§54-142a(a) and 54-142c, G.S., the requested records are exempt from disclosure at this time and cannot be provide to the complainant. See Wood v. Freedom of Information Commission, Superior Court, Docket No. 14-5015956-S, Judicial District of New Britain, (January 21, 2015, *Schuman, J.*)

23. With respect to the complainant's allegation described in paragraph 17(c), above, it is found that the respondents provided the complainant with copies of the requested records as they were reproduced by the copying machine without any intention to provide him with illegible records and it is concluded that the respondents did not violate the disclosure provision of the FOI Act in that record.

24. However, at the hearing on this matter, the respondents agreed to manipulate the settings on the copying machine in effort to produce more legible copies of those records the complainant claims were not.

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

1. The complaint is hereby dismissed.



Commissioner Christopher Hankins
as Hearing Officer