



FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-130

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

October 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, October 28, 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 October 16, 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 October 16, 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 October 16, 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: Maura Mastrony
Arthur C. Laske, Esq. and John P. Bohannon, Jr. Esq.

2015-10-01/FIC# 2015-130/Trans/wrbp/PSP//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Maura Mastrony and
Clendenen & Shea, LLC,

Complainants

Docket # FIC 2015-130

against

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

Respondents

September 16, 2015

The above-captioned matter was heard as a contested case on July 2, 2015, at which time the complainants and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The case caption has been amended to accurately reflect the complainants.

After the hearing in this matter, pursuant to §1-21j-38 of the Regulations of Connecticut State Agencies, the respondents filed, without objection, one after-filed exhibit which was marked as follows: Respondents' Exhibit 2: Objection to Disclosure (dated 11/25/14). In addition, pursuant to an order of the hearing officer, dated August 6, 2015, the respondents filed, without objection, a second after-filed exhibit, which was marked as follows: Respondents' Exhibit 3: Affidavit of Sgt. Nancy O'Donnell, Department Clerk.

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 July 29, 2014, September 11, 2014, and September 25, 2014, the Board of Police Commissioners ("Board") held disciplinary hearings regarding Sergeant Pasquale Feola. It is found that such disciplinary hearings were held in executive session.
3. It is found that, by letter dated October 15, 2014, the complainants made a written request to the Chief of the Bridgeport Police Department for copies of the following documents:

- [a] The personnel file of Sergeant Pasquale Feola;
- [b] The medical file of Sergeant Pasquale Feola;
- [c] Any and all training records for Sergeant Pasquale Feola;
- [d] The Internal Affairs file for Sergeant Pasquale Feola;
- [e] The Internal Affairs file number 131-182;
- [f] A copy of the Bridgeport Police Department's Administrative Orders in effect in August 2013;
- [g] A copy of all tapes and/or recordings and/or transcripts of the proceedings having taken place before the Bridgeport Board of Police Commissioners in the Internal Affairs matter file number 131-182;
- [h] A copy of all documents filed and/or submitted in conjunction with the proceedings having taken place before the Bridgeport Board of Police Commissioners in the Internal Affairs matter file number 131-182;
- [i] Any and all towing records for the Bridgeport Police Department from August 25 and August 26, 2013;
- [j] A copy of all tapes and/or recordings of calls for service from the Bridgeport Police Department's CAD system from 5:00 p.m. on August 25, 2013 through 10:00 a.m. on August 26, 2013; and
- [k] A copy of all tapes and/or recordings of calls to the Bridgeport Police Department's dispatch center from 5:00 p.m. on August 25, 2013 through 10:00 a.m. on August 26, 2013.

4. It is found that, by letter dated October 21, 2014, the respondent Chief of Police acknowledged the receipt of the complainants' October 15th request, described in paragraph 3, above. It is also found that the respondents informed the complainants that such request was forwarded to the Office of the City Attorney, and once their research was completed the respondents would advise the complainants as to the costs for copies of the requested documents.

5. It is found that the respondents notified Sergeant Feola of the complainants' October 15th request, and gave him an opportunity to object to disclosure. It is found that, by letter dated November 25, 2014, Sergeant Feola objected to the release of his medical and/or personnel file.

6. It is found that on or about February 5, 2015, and February 10, 2015, the complainant Maura Mastrony left voicemail messages for the respondents regarding the complainants'

October 15th request, but as of the time of the filing of the complaint in this matter, the respondents had not returned her calls.

7. By email dated February 13, 2015, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide them with copies of the records described in paragraph 3, above. At the hearing in this matter, the complainant Maura Mastrony testified that the only records still at issue were records responsive to the requests described in paragraphs 3[g] and 3[h], above.

8. Section 1-200(5), G.S., defines “public records or files” as:

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.

9. 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 section 1-212.

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

11. It is found that the records requested by the complainants are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

12. After the hearing in this matter, pursuant to an order of the hearing officer, the respondents submitted three unredacted transcripts to the Commission for in camera review. For identification purposes, the in camera records total 266 pages and pertain to disciplinary hearings held on July 29, 2014 (63 pages), September 11, 2014 (175 pages) and September 25, 2014 (28 pages). On the in camera index, counsel for the respondents certified that photographs, which were marked as exhibits at the September 11th disciplinary hearing, were being excluded from the in camera submission. Respondents’ counsel certified that such exhibits could be provided upon request.

13. Subsequently, pursuant to a second order of the hearing officer, the Clerk for the respondent Police Department, who is responsible for maintaining the records of the proceedings that take place before the Board, submitted an affidavit attesting that she conducted a search for records responsive to the complainants' requests described in paragraphs 3[g] and 3[h], above, and that the three transcripts were the only records that were in the possession of the department that were responsive to such requests. The Clerk also attested that a review of department records did not uncover the photographs that were referred to in the transcripts as exhibits nor whether such photographs were kept by the attorneys after the hearing. In addition, the Clerk attested that the executive sessions were not tape recorded and the only record made of them was through transcription.

14. It is found that the September 11, 2014 transcript contains references to the following records which were not submitted to the Commission for an in camera inspection:

- a. *packet* at page 7 (line 19), page 29 (line 23) and page 135 (line 12);
- b. *package* at page 5 (line 15), page 95 (line 15) and page 154 (line 11);
- c. *photographs* marked as exhibits at page 13 (lines 13-19), page 30 (line 25), page 31 (lines 1-2), page 95 (lines 9-13) and page 146 (lines 2-8); and
- d. *transcript* at page 40 (lines 15-18) and page 48 (lines 15-18).

15. It is found that there is conflicting evidence regarding whether the three transcripts submitted to the Commission for in camera inspection are the only records in the possession of the respondents that are responsive to the complainants' requests described in paragraphs 3[g] and 3[h], above. Based on such conflicting evidence and a review of the in camera records, it is found that the respondents failed to perform a diligent search for records responsive to such requests.

16. With respect to the transcripts submitted for in camera inspection, on the in camera index, the respondents claim only that such transcripts are exempt from disclosure pursuant to §§1-200(6)(A) and 1-231, G.S. In addition, at the hearing, the respondents, through counsel, contended that the disclosure of the transcripts would defeat the entire purpose for holding the disciplinary hearings in executive session, and therefore, such records should not be disclosed.

17. Section 1-225(a), G.S., provides in relevant part: “[T]he meetings of all public agencies, except executive sessions, as defined in subdivision (6) of section 1-200, shall be open to the public.”

18. Section 1-200, G.S., provides in relevant part:

(6) “Executive sessions” means a meeting of a public agency at which the public is excluded for one or more of the following purposes: (A) Discussion concerning the appointment, employment, performance, evaluation, health or dismissal of a public officer or employee, provided that such individual may require that discussion be held at an open meeting....

19. Section 1-231, G.S., provides:

(a) At an executive session of a public agency, attendance shall be limited to members of said body and persons invited by said body to present testimony or opinion pertinent to matters before said body provided that such persons' attendance shall be limited to the period for which their presence is necessary to present such testimony or opinion and, provided further, that the minutes of such executive session shall disclose all persons who are in attendance except job applicants who attend for the purpose of being interviewed by such agency.

(b) An executive session may not be convened to receive or discuss oral communications that would otherwise be privileged by the attorney-client relationship if the agency were a nongovernmental entity, unless the executive session is for a purpose explicitly permitted pursuant to subdivision (6) of section 1-200.

20. It is concluded that §1-200(6), G.S., explicitly states the purposes for which an agency is permitted to enter into executive session. It is concluded that §1-231, G.S., limits the attendance of individuals providing testimony or opinion in an executive session to the time period necessary for presenting the same.

21. This Commission further notes that §§1-200(6)(A) and 1-231, G.S., do not provide an exemption for the records of an executive session that an agency chooses to keep.

22. It is found that the respondents failed to prove that the transcripts, described in paragraph 12, above, were exempt from disclosure under the FOI Act or any other applicable state statute or federal law.

23. Although not raised by the respondents, §1-217, G.S., permits the redaction of “the residential address of... [a] sworn member of a municipal police department.” It is therefore concluded that the residential address found in the September 11, 2014 transcript (page 80) is exempt from disclosure pursuant to §1-217, G.S.

24. At the hearing, the respondents also contended that the complainants sought the records at issue, not for some “greater public purpose,” but rather, to be used in a civil lawsuit against Sergeant Feola which was filed by a client of the complainants.

25. It is found that the complainants represent an individual who lodged a complaint against Sergeant Feola for alleged misconduct. It is further found, however, that the complainants' motivation for their records request is irrelevant to their right to information from the government. See Chief of Police, Hartford Police Department v. Freedom of Information Commission, 252 Conn. 377, 387 (2000)(status or motive of the applicant for disclosure is irrelevant because the FOI Act vindicates the public's right to know, rather than the rights of an

individual); Groton Police Department v. Freedom of Information Commission, 104 Conn. App. 150, 165 (2007).


26. It is concluded, therefore, that the respondents violated the disclosure provisions of the FOI Act.

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 complainants with copies of the transcripts described in paragraph 12 of the findings, above, free of charge. In complying with this order, the respondents may redact the information described in paragraph 23 of the findings, above.

2. The respondents shall forthwith conduct a diligent search for additional records responsive to the complainants' requests described in paragraphs 3[g] and 3[h] of the findings, above. If the respondents discover additional records that they have not provided to the complainants, they shall provide copies of such records to the complainants, free of charge. If the respondents do not discover additional records, the respondent Chief of Police shall state such result, along with the steps undertaken to conduct a diligent search, in an affidavit provided to the complainants.

3. Henceforth, the respondents shall strictly comply with the disclosure requirements of §1-210(a), G.S.


Paula S. Pearlman
as Hearing Officer