

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Miller,

Complainant

against

Docket #FIC 2016-0105

Vernon Riddick, Chief, Police  
Department, City of Waterbury;  
Police Department, City of  
Waterbury; Neil O'Leary,  
Mayor, City of Waterbury;  
City of Waterbury; Scott Semple,  
Commissioner, State of  
Connecticut, Department of  
Correction; and State of Connecticut,  
Department of Correction,

Respondents

October 26, 2016

The above-captioned matter was heard as a contested case on June 14, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts 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. By letter of complaint filed February 8, 2016, the complainant appealed to the Commission, alleging that the Waterbury respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of public records.
3. It is found that the complainant made seven separate requests to the Waterbury respondents on January 21 and 22, 2016, requesting, among other records: transcripts and audio recordings of his June 5, 2014 arrest; text messages, emails and Mobile Digital Terminal messages relating to his arrest; the transcript of any meeting or hearing

concerning any of the seven police officers involved in his arrest; any records of the repair of the three police vehicles damaged during his arrest; records of any criminal investigation of the seven officers involved in his arrest; copies of, or a list of, any civil complaints against the seven officers; and the complete personnel and employment files, including disciplinary complaints, for the seven officers.

4. It is found that the respondent Waterbury Police Department acknowledged the requests directed to it on January 25, 2016, informing the complainant that it was searching for the records, that the cost of copies was \$0.50 per page, and that all records would be sent to the respondent Department of Correction for review. Because the complainant's request to the City of Waterbury respondents was addressed incorrectly, it was not acknowledged until sometime later.

5. The January 25, 2016 letter also set forth the Waterbury respondents' "Proof of Indigency Policy," as follows:

For copies of records requested pursuant to the Freedom of information Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by this Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request). If you claim that you cannot pay for the production of these documents, you will be required to provide proof of indigency as set forth herein.

6. It is found that the Waterbury respondents searched for the requested records, and sent the complainant letters on January 29, February 15 and March 10, setting forth the cost of the copies, some of which were large (\$150.00 for the personnel files) and some of which were small (\$1.00 for a list of civil cases, and \$3.00 for the motor vehicle repair records).

7. It is found that the complainant declined to pay for any of the copies, and asserted his indigence by way of an affidavit that averred, among other things, that he had total liabilities in excess of \$6,800, total assets of less than \$150.00, was contemplating filing for a Chapter 7 bankruptcy, and did not have sufficient cash on hand to pay the \$150.00 for the personnel files.

8. It is also found that the complainant had about \$44.00 in his inmate trust account on the date of his requests.

9. 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.

10. 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 (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.

11. Section 1-212(a)(1), G.S., provides in relevant part:

The fee for any copy provided in accordance with the Freedom of Information Act:

(1) By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page ....

12. Additionally, §1-212(d)(1), G.S., provides: “The public agency shall waive any fee provided for in this section when: (1) The person requesting the records is an indigent individual ....”

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

14. The Commission takes administrative notice of its records and files in Docket #FIC 2012-324, Albright v. Waterbury Police Department, in which the Commission approved the Waterbury respondents' indigency policy.

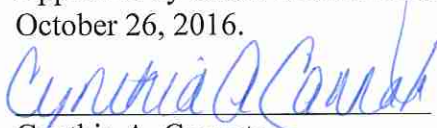
15. It is found that the complainant did not satisfy the respondents' indigency policy.

16. It is concluded that the State respondents did not violate the FOI Act as alleged.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 26, 2016.



Cynthia A. Cannata  
Acting Clerk of the Commission

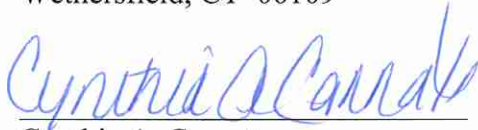
PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

David Miller #394879  
MacDougall Walker Correctional Institution  
1153 East Street, South  
Suffield, CT 06080

Vernon Riddick, Chief, Police Department, City of Waterbury;  
Police Department, City of Waterbury; Neil O'Leary,  
Mayor, City of Waterbury; City of Waterbury; and  
City of Waterbury  
c/o Kevin J. Daly, Esq.  
235 Grand Street, 3<sup>rd</sup> Floor  
Waterbury, CT 06702

and Scott Semple, Commissioner, State of Connecticut,  
Department of Correction; and State of Connecticut,  
Department of Correction  
James Neil, Esq.  
24 Wolcott Hill Road  
Wethersfield, CT 06109



Cynthia A. Cannata  
Acting Clerk of the Commission