

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket # FIC 2018-0689

Chief, Police Department, Town of West  
Hartford; Police Department, Town of West  
Hartford; and Town of West Hartford,

Respondents

November 13, 2019

The above-captioned matter was heard as a contested case on October 11, 2019, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

On September 9, 2019, the respondents filed a Petition for Relief pursuant to §§1-206(b)(2) and (b)(5), G.S. The complainant filed a response in opposition<sup>1</sup> via email dated September 12, 2019, and the respondents subsequently filed a reply via email dated September 13, 2019.

At the hearing, the hearing officer notified the parties that the respondents' claim that the appeal has been brought frivolously and request for civil penalties pursuant to §1-206(b)(2), G.S., is necessarily addressed through the submission of evidence at a contested case hearing. The hearing officer further notified the parties at the hearing that the Commission's consideration of a petition for relief from vexatious requester, brought pursuant to §1-206(b)(5), G.S., is a separate administrative process under the review of the Executive Director.

---

<sup>1</sup> The complainant contended in his response in opposition that he had not received a copy of the respondents' Petition for Relief. The respondents contended in their reply that the U.S. Postal Service attempted service of the Petition for Relief, but an authorized recipient was not available for delivery, and the U.S. Postal Service therefore left a notice for the complainant to pick up the mailing or schedule redelivery. Based on the complainant's contention that he had not received a copy of the Petition for Relief, the Commission forwarded a copy to the complainant. At the hearing, the respondents sought to introduce the envelope and Petition for Relief that was returned to the respondents as unclaimed when the complainant did not pick up or schedule a redelivery. Ultimately, the parties stipulated that the respondents mailed the Petition for Relief to the complainant, that it was returned to the respondents as unclaimed, but the complainant received a copy from the Commission.

Consequently, the respondents' petition for relief pursuant to §1-206(b)(5), G.S., will not be addressed further herein.

Subsequent to the hearing, the complainant submitted four documents as after-filed exhibits. The Commission has not received any objection from the respondents as to the submission of such documents. The documents are marked as follows: Complainant's Exhibit C: one-page document which is a copy of the front and back of a U.S. Postal Service Form 3849 Delivery Notice/Reminder/Receipt; Complainant's Exhibit D: one-page document which is a copy of a news article; Complainant's Exhibit E: one-page document which is a copy of a Judicial Branch Pending Case Detail in Docket No. H14H-CR15-0682976-S; and Complainant's Exhibit F: one-page document which is a copy of a Judicial Branch Pending Case Detail in Docket No. H14H-CR16-0684310-S.

Subsequent to the transmittal of proposed final decision, dated October 22, 2019, and hearing officer report, dated October 21, 2019, the hearing officer received a motion for an order to preserve records, filed by the complainant. By notice of order dated October 28, 2019, the hearing officer denied the motion.

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 November 17, 2018, the complainant made a request for copies of all records maintained by the respondents that are related to the following allegations set forth in the complainant's request: "a few days before Christmas in 2015 the victim left a bar while intoxicated, she encountered a Connecticut State Trooper, instead of helping the woman the Connecticut State Trooper took her to his car and coerced [her] into having non-consensual sex with him, when the victim attempted to resist the State Trooper used physical force to restrain her and then raped her."
3. It is found that by letter postmarked November 23, 2018, the respondents notified the complainant that a search had been conducted, writing, in relevant part: "I received your request for an incident that happened in December 2015. I searched through my records and without names or more information I cannot provide you with a police report. Unfortunately in December I did not find anything related to a sexual assault. If you are able to provide us with names of who was involved that could help us find the report. Also, double check to make sure that it happened in West Hartford because if it didn't happen in West Hartford then we would not have a report on it . . . Please call us if you have questions, the process may go quicker that way rather than sending letters back and forth . . ."
4. By letter of complaint dated November 29, 2018 and filed December 3, 2018, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide records responsive to his request.
5. Section 1-200(5), G.S., defines "public records or files" as follows:

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.

6. 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. (Emphasis added).

7. 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."

8. It is found that, to the extent the requested records exist, they are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that by letter dated November 30, 2018, the complainant contacted the respondents, writing that he had yet to receive any records from the respondents, asking if records would be available, whether the respondents would require prepayment, and if the respondents were withholding any records claiming an exemption from disclosure.

10. It is found that on or about December 10, 2018, the respondents mailed a second copy of the November letter identified in paragraph 3, above, to the complainant, which the complainant received.

11. It is found that by letter dated December 15, 2018 the complainant replied to the respondents, again setting forth the same request and allegations set forth in the November 17, 2018 request.

12. It is found that by letter dated December 21, 2018, the respondents notified the complainant that no responsive records could be located with the information provided by the complainant, noting that records were searched for the period of December 2015. The respondents again requested that the complainant provide any additional information so that they could search further, and told the complainant he could contact the respondents to discuss by phone.

13. It is found that the complainant further corresponded with the respondents by letter dated December 18, 2019<sup>2</sup>, which was received by the respondents on January 24, 2019. The complainant indicated that he was “asking for additional records related to the investigation” identified in his November 17, 2018 request, including “copies of any communications between [the respondents] and the Connecticut State Police, the Connecticut State’s Attorney’s Office, the Victims Advocates office, and any other State or Federal agency that concern the sexual assault investigation . . . copies of any records that concern any DNA tests related to the sexual assault investigation . . . include[ing] test results as well as records related to any attempt to obtain DNA samples or DNA evidence . . . any evidence . . . related to the sexual assault investigation . . . include[ing] records related to the evidence and any records that related to the chain of custody for the evidence . . . [and] copies of all policies, procedures or similar records . . . that generally concern the investigation of an alleged sexual assault.” It is found that the complainant intended the December 18 request to be a continuation of his November 17, 2018 request for all records pertaining to the allegations set forth therein.

14. It is found that, by letter dated January 25, 2019, the respondents acknowledged the complainant’s December 18, 2018 letter and informed the complainant that they could not find any records consistent with the alleged sexual assault. However, it is found that the respondents offered to provide a policy responsive to the complainant’s request for policies and procedures.

15. It is found that, by letter dated February 12, 2019, the complainant corresponded again with the respondents and requested that the respondents conduct an additional search.

16. It is found that, by letter dated February 15, 2019, the respondents replied to the complainant, again restating that they could not find any records consistent with alleged sexual assault. It is found that the respondents provided the complainant with a copy of the policy referenced in paragraph 14, above.

17. At the hearing, the complainant testified that he recalled having read about an incident that occurred in the Town of West Hartford that was consistent with the allegations set forth in his November 17, 2018 request to the respondents. The complainant testified that the allegations set forth were his best recollection of what he had read, and that he had no firsthand knowledge of the allegations. The complainant further testified that he conducted his own search for information to confirm the accuracy of the allegations he recalled, but could not find any information to support his recollection.

18. It is found that three of the respondents’ staff, which included the Records Supervisor and Assistant Chief of Operations, each conducted searches for records responsive to the complainant’s November 17, 2018 request. It is found that the respondents utilized the information provided by the complainant in the November 17, 2018 letter to conduct the searches. It is found that after multiple searches the respondents could not locate any responsive records.

19. Acting beyond the complainant’s express request, the respondents attempted to locate responsive records by searching beyond the December 2015 time period set forth in the

---

<sup>2</sup> The complainant acknowledged at the hearing that the letter was drafted on or about December 18, 2018, not 2019.

complainant's November 17, 2018 request, communicated with then-Assistant Police Chief McCue about whether he had any knowledge of an incident consistent with the allegations set forth in the complainant's November 17, 2018 request, and conducted internet searches utilizing the allegations set forth in the complainant's November 17, 2018 letter. It is found that the respondents could not find any information to confirm that the alleged incident identified in the complainant's November 17, 2018 letter had occurred. It is found that the respondents' conclusion that, not only do they not maintain any responsive records, but that no such incident<sup>3</sup> occurred as set forth in the November 17, 2018 request, was reasonable.

20. Based on the credible testimony of the respondents, it is found that the respondents do not maintain any records responsive to complainant's November 17, 2018 request.

21. Since it is found that the respondents do not maintain records responsive to the complainant's request, the respondents did not violate the FOI Act as alleged by the complaint.

22. Since no violation is found, it is not necessary to consider the complainant's promptness allegation.

23. The respondents contend that the complainant brought this appeal frivolously and request that the Commission issue a civil penalty of up to \$1000 against the complainant. Section 1-206(b)(2) provides, in relevant part:

If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars.

24. It is found that at the time of the complainant's November 17, 2018 FOI request, the complainant believed that the respondents conducted an investigation into an alleged sexual assault or rape, as set forth in the November 17, 2018 request. It is further found that the complainant believed that the respondents maintained records responsive to his request, and that the information he provided was sufficient to enable the respondents to produce responsive records.

25. Despite the complainant's beliefs, the complainant testified that he conducted several of his own searches for information to confirm the accuracy of the allegations he recalled, but could not find any information to support his recollection. Furthermore, the complainant

---

<sup>3</sup> During the hearing, the Assistant Chief of Operations testified that in November 2015 an incident occurred in the Town of West Hartford involving a Connecticut State Trooper. However, the allegations set forth in the November 17, 2018 request pertaining to an incident of sexual assault by a State Trooper are not consistent with the incident that occurred in November 2015.

testified that his own memory is fallible.

26. During the hearing, the complainant testified that he continued to believe that the respondents conducted an investigation, maintained responsive records, and that the respondents refused to provide responsive records.

27. However, the complainant acknowledged that he has no firsthand knowledge to support his belief that the respondents conducted an investigation, or to support his belief that the respondents maintain responsive and are withholding said records.

28. The complainant's ongoing belief that the respondents maintain responsive records, and are withholding said records, is not reasonable. The respondents notified the complainant five times, in writing, that they could not locate records responsive to the complainant's November 17, 2018 request. The respondents' conclusion that they could not locate records responsive to the November 17, 2018 request was consistent with the complainant's inability to find any information to support the allegations set forth therein. Additionally, the respondents invited the complainant to discuss the November 17, 2018 request by telephone, but the complainant did not attempt to contact the respondents by phone.

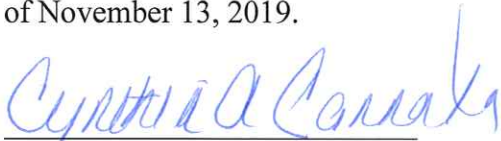
29. Though the complainant's beliefs and actions were unreasonable, the respondents failed to establish that the complainant brought this appeal frivolously and solely for the purpose of harassing the respondents.

30. Since it has not been found that the appeal was brought frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, consideration of civil penalties is not warranted.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of November 13, 2019.



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:

**JAMES TORLAI**, 127 Barton Street, Torrington, CT 06790

**CHIEF, POLICE DEPARTMENT, TOWN OF WEST HARTFORD; POLICE DEPARTMENT, TOWN OF WEST HARTFORD; AND TOWN OF WEST HARTFORD**,  
c/o Attorney Garmon Newsom , II, 50 South Main Street, West Hartford, CT 06107



Cynthia A. Cannata  
Acting Clerk of the Commission