

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

William Holmes,

Complainant

against

Docket #FIC 2019-0385

Chief, Police Department, City of New  
London; Police Department, City of New  
London; and City of New London,

Respondents

March 11, 2020

The above-captioned matter was heard as a contested case on October 18, 2019, at which time the complainant and the 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, 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, by letter dated June 20, 2019, the complainant made a request to the respondents for copies of “any and all reports, documentation, photos and drawings, etc. . . . concerning State v. William Holmes on: CR10-237181.” The complainant also provided the respondents with the police case number, incident date, and his habeas corpus docket number. The complainant requested a fee waiver, citing §1-212(d)(5), G.S., and notified the respondents that any responsive records related to his pending habeas corpus action.
3. By letter of complaint dated June 21, 2019 and filed July 1, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with records responsive to his request.
4. 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.

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 (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: "Any 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, 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.

8. During the hearing, the complainant contended that the respondents did not communicate with him in any manner regarding his pending request until they provided him with copies of records they intended to present as evidence at the contested case hearing. The complainant also contended that he was entitled to a fee waiver and the respondents violated §1-212(d)(5), G.S. Finally, the complainant contended that the respondents did not provide all responsive records.

9. During the hearing, the respondents conceded that they did not communicate with the complainant until they provided him with the records they intended to introduce as evidence. However, such records were provided free of charge. Additionally, the respondents contended that they conducted a diligent search and have been unable to locate any additional records responsive to the complainant's June 20, 2019 request.

10. It is found that, by letter dated June 27, 2019, the respondents notified the Department of Correction FOI Administrator that they received the June 20, 2019 request from the complainant, and any responsive records would be mailed to the FOI Administrator upon payment from the complainant. It is further found that the respondents did not communicate with the complainant to acknowledge receipt of the June 20, 2019 request.

11. It is found that the respondents concluded that they did not have any records responsive to the complainant's June 20, 2019 request that had not already been disclosed under a prior FOI Act request made by the complainant's then-attorney, Avery A. Kahn. It is found

that on or about November 16, 2018, Attorney Kahn made a request on behalf of the complainant for any and all reports concerning the complainant's conviction, providing the complainant's name, inmate number, date of birth, an incident date, and other information relevant to assist in a search for responsive records. It is found that, by facsimile dated January 18, 2019, the respondents provided Attorney Kahn with one responsive record, and notified counsel that they did not maintain any additional records responsive to the request.

12. However, it is found that the respondents subsequently conducted additional searches for records. It is further found that searches were conducted by the Records Clerk, a Police Sergeant, and the Captain who oversees the records department; that searches were conducted of paper files by hand, in electronic databases, and microfiche; and using various search terms, including by the complainant's name, dates, and case numbers.

13. It is found that, as a result of the searches set forth in paragraph 12, above, the respondents identified three additional pages of responsive records. It is further found that the respondents provided the complainant with copies of said records by letter dated September 26, 2019 and did not charge the complainant for the copies. Consequently, the complainant's contention that the respondents violated §1-212(d)(5), G.S., is moot.

14. While the respondents are not legally bound to go to another public agency and collect that agency's public records in order to fulfill a FOI Act request made upon them (see Lash v. FOIC, et al., 300 Conn. 511, 521 n.7 (2011) (affirming appellate court's determination that one public agency has no duty to make available the records of another public agency)), the respondents contacted the New London States Attorney's Office and the Superior Court to ask whether either office maintains any records that could be responsive to the complainant's request. However, as of the date of the hearing in this matter, the respondents did not know whether either office maintained any such records. However, counsel to the respondents represented that if any additional records are located, the respondents will contact the complainant.

15. Based on the credible testimony of the respondents, it is found that the respondents conducted a reasonable and diligent search and have not been able to locate any additional responsive records. Consequently, it is found that the respondents did not violate the FOI Act as alleged by the complainant. However, it is imperative that public agencies have a duty to safeguard their public records as is provided by law, and the Commission is further concerned that the respondents initially relied upon their prior search for records in response to the November 16, 2018 FOI Act request by Attorney Kahn, and is also concerned that the respondents did not acknowledge the complainant's June 20, 2019 request, or otherwise communicate with him about the status of his pending request, prior to providing their exhibits for the hearing.

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 March 11, 2020.



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:

**WILLIAM HOLMES, #227143**, Corrigan/Radgowski Correctional Center, 986 Norwich-New London Turnpike, Uncasville, CT 06582

**CHIEF, POLICE DEPARTMENT, CITY OF NEW LONDON; POLICE DEPARTMENT, CITY OF NEW LONDON; AND CITY OF NEW LONDON**, c/o Attorney Brian K. Estep, Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, PO Box 1351, New London, CT 06320



Cynthia A. Cannata  
Acting Clerk of the Commission