

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Gregory Weathers,

Complainant

against

Docket # FIC 2019-0677

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

Respondents

August 11, 2021

The above-captioned matter was heard as a contested case on October 16, 2020, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearing was conducted telephonically.¹

At the request of the hearing officer (see paragraph 11, below), by email dated November 2, 2020, the respondents submitted an affidavit by Ann Kubel, Administrative Assistant to the respondent Chief of Police, and also provided a copy to the complainant. Said affidavit has been marked as Respondents' Exhibit 2 (after filed).

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-form dated October 24, 2019, the complainant requested that the respondents provide him with a copy of the following records:
 - (a) Any and all police reports, documents from murder on 3/26/15;
 - (b) Any and all psychiatric records case #15D-0426; and

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

(c) Any and all lab reports and photos file #150326-069.

3. By letter of complaint dated November 2, 2019 and filed with the Commission on November 13, 2019,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for certain public records and requesting that civil penalties be assessed against the respondents.

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

[a]ny 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:

[e]xcept 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: “[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 concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the hearing, the complainant alleged that the respondents violated the FOI Act in that they improperly determined that he is not indigent and that he should not have been charged a fee of \$67.75 for access to public records. The complainant also contended that the respondents did not provide all responsive records, specifically certain audio and video recordings that the respondents maintain.

9. At the hearing, counsel for the respondents appeared and offered documentary evidence but did not present any witnesses. Instead, counsel argued that there was no denial, as alleged by the complainant, because the respondents had not received a copy of the October 24, 2019 request at the time of the appeal, and therefore the complaint should be dismissed.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

10. Section 1-206(b)(1), G.S., provides in relevant part: “[a]ny person denied the right to inspect or copy records under 1-210 ... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission....”

11. Because the respondents did not call any witness at the October 16, 2020 hearing to attest to when the respondent Bridgeport Police Department received the October 24, 2019 request, the hearing officer issued an order that the respondents produce an affidavit from an individual who could attest to when the respondents received the request. By email dated November 2, 2020, counsel to the respondents submitted an affidavit by Ann Kubel, Administrative Assistant to the respondent Chief of Police and also provided a copy to the complainant. Said affidavit has been marked as Respondents’ Exhibit 2 (after filed).

12. It is found that Ms. Kubel became the Administrative Assistant to the Chief of Police at the respondent Bridgeport Police Department on February 3, 2020. It is further found that, although Ms. Kubel was not yet employed by the respondent Bridgeport Police Department at the time of the request, she has familiarity with the general practice of the respondent Police Department with respect to records requests. It is further found that such general practice is to stamp the request received, write a letter of acknowledgment, and send the request to the Office of the City Attorney within the day or immediately the next day after receipt of the request.

13. It is found that the respondents received the request described in Paragraph 2 on November 4, 2019, stamped it “received”, and the Office of the City Attorney for the City of Bridgeport acknowledged said request that same day. It is further found that the complainant dated and mailed his complaint two days earlier, on November 2, 2019.

14. It is therefore found that at the time of the complaint, the respondents had not denied the complainant’s request for records, or denied any other right under the FOI Act within the meaning of §1-206(b)(1), G.S. Because there was no denial at the time of the complaint, it is concluded that the respondents did not violate the FOI Act under the facts of this case.

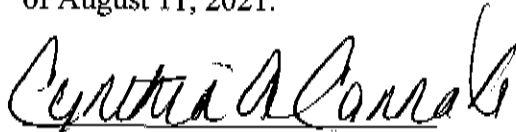
15. Nevertheless, the respondents searched for responsive records, and on or about December 19, 2019, the respondents notified the complainant that copies were ready and the cost due. On or about December 26, 2019, the complainant rendered payment and records were subsequently provided to him.

16. Because the respondents did not violate the FOI Act under the facts of this case, consideration of the complainant’s contentions raised at the hearing, and the request for consideration of the imposition 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 August 11, 2021.

A handwritten signature in cursive script, reading "Cynthia A. Cannata". The signature is written in black ink and is positioned above the printed name and title.

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:

GREGORY WEATHERS, #288897, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

ARMANDO PEREZ, CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission