

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Russell Peeler,

Complainant

against

Docket #FIC 2020-0068

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

Respondents

March 10, 2021

The above-captioned matter was heard as a contested case on November 17, 2020, and January 8, 2021, at which times the complainant and the respondents appeared 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

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 December 9, 2019, the complainant requested a copy of a criminal case file identified as 99D-0038, from the respondents.
3. It is found that the respondents received the request, described in paragraph 2, above, on December 13, 2019, and that, by letter dated that same day, acknowledged the request and informed the complainant that he would be notified when the responsive records were available.
4. It is found that, on January 8, 2020, the complainant, through his counselor, contacted the respondents and left a message inquiring as to the status of his request.
5. It is found that, in response to that inquiry, the city attorney's office wrote to the complainant "to provide an update" on his request, informing the complainant that they were "still in the process of retrieving [the] responsive records." It is found that the letter was

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

mistakenly dated December 13, 2019, and that the letter was actually written and sent to the complainant on or about January 13, 2020.

6. By letter dated February 3, 2020, and filed February 5, 2020, the complainant appealed to this Commission, alleging the respondents violated the Freedom of Information (FOI) Act by denying his request.²

7. Section 1-200(5), G.S., provides:

“[p]ublic 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. 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 hoursor (3) receive a copy of such records in accordance with section 1-212....

9. 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.”

10. It is found that the requested records, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. The complainant testified, and it is found, that, as of the date of the hearing in this matter, the respondents had not provided any of the requested records to him. He expressed frustration with the more than one-year delay.

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §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. Accordingly, the Commission retains jurisdiction over this appeal.

12. Sergeant Kim Nikola, who is in charge of the records room and responsible for responding to FOI requests on behalf of the respondents, testified at the hearing in this matter that she directed and later conducted a search herself for the requested records.

13. It is found that Sgt. Nikola received the request, described in paragraph 2, above, on or around December 13, 2019, and that, because the requested records pertained to a murder investigation dating back to the 1990s, she believed the records would be located in the “archives” in city hall, located across the street from the police department. Therefore, she directed a patrol officer who was assisting her at the time, to search for the records there.

14. It is found that the records of the respondent police department are not maintained in one central location. It is also found that, at the time of the request at issue, the respondent police department did not have a system in place, such as an electronic database, or even a manual index, for tracking or cataloging records that were sent to the “archives”, such that they could be easily located upon request. It is further found that archived records are not maintained in electronic form, but rather are “hard copies” that were typically placed in “banker’s boxes” that were not stored in any organized, indexed fashion. It is found that locating records in the “archives” involved manually searching through the various banker’s boxes filled with records.

15. It is found that, between mid-December 2019 and mid-March 2020, as time permitted in his work schedule, the patrol officer searched for “several hours” through the boxes in the “archives” for the requested records, but was unable to locate them. It is found that, thereafter, Sgt. Nikola and the patrol officer searched together through the “archives” for several additional hours, again, as their schedules permitted, but did not locate them.

16. It is found that, sometime prior to mid-March 2020, Sgt. Nikola contacted the homicide detective bureau and asked the staff there to search for the records responsive to the complainant’s request. It is found that a search was conducted within two days of that request, but that no responsive records were located.

17. The Commission takes administrative notice of the fact that around mid-March 2020, due to the COVID-19 pandemic, state, city and local government buildings, as well as businesses considered non-essential, were closed by executive order of the Governor. It is found that city hall remained completely closed until mid-June 2020.

18. It is found that the respondents offered no evidence regarding the efforts they made to continue to search for the requested records between the date the shut-down order was lifted in June 2020 and mid-November 2020.

19. It is found that, with the date of the first hearing in this matter (November 17, 2020) approaching, Sgt. Nikola inquired of a detective in the Major Crimes Unit within the detective bureau, as to whether he had any information about the location of the requested records. The detective informed her that there were two banker’s boxes of records related to the homicide investigation identified in the complainant’s request in a locked closet physically located within the Major Crimes Unit.

20. It is found that Sgt. Nikola retrieved the banker's boxes in mid-November 2020 from the closet within the Major Crimes Unit. It is further found, however, that as of the date of the continued hearing in this matter (some seven weeks after the records were located), none of the requested records had been provided to the complainant. When asked by the hearing officer why no records had been provided to the complainant, Sgt. Nikola testified that it was the responsibility of the city attorney's office to pick up the records from her, review them, and provide copies of the records to the complainant.

21. The respondents argued at the hearing in this matter that this case involves only the issue of "promptness", and that they did not violate the promptness requirements of the FOI Act because the more than one-year delay in providing the requested records to the complainant was caused by the COVID-19 pandemic.

22. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) *6, a public agency should consider its obligations under the FOI Act as a "primary duty" of that agency, "on par with the [agency's] other significant duties, or said another way, that the agency's FOIA duty is not a second class duty."

23. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

24. With regard to the factors listed above, the respondents noted only, and it is found, that the complainant did not indicate in his request that he needed the requested records by a particular date.

25. Although the respondents blamed the pandemic for the delay in providing the requested records to the complainant, the facts of this case, as set forth above, demonstrate that the delay was caused primarily by the respondents' failure to maintain their public records in an indexed, organized, and orderly fashion. The request at issue was received by the respondents on December 13, 2019, some three months prior to the shut-down caused by the pandemic. Had the respondents maintained the public records in their custody in an indexed, organized, and orderly fashion, such records presumably could have been located quickly during the initial search conducted by Sgt. Nikola and her staff, and provided to the complainant prior to the shut-down. As the Commission previously opined: "The fact that the respondents' method of filing and/or maintaining public records apparently lacked organization at the time of the request at issue,

does not excuse undue delay in locating such records, and is not a defense to the claim that the records were not provided promptly." See Lowthert v. Superintendent of Schools, Wilton Public Schools; and Wilton Public Schools, Docket #FIC 2014-148 (January 30, 2015).

26. Additionally, it is found that the respondents did not prioritize the request at issue once the requested records were located, and that such failure also contributed to the delay. The Commission is mindful that staff at state and local government agencies are continuing to work mostly or entirely from home, which can present challenges to agency operations, including responding to records requests. However, the Commission is concerned, given the length of time between the date of the request in this case and the date the requested records were located, that the respondents did not act quickly to review the records and send even a portion of them, on a rolling basis, to the complainant.

27. Based upon all of the foregoing, it is concluded that the respondents violated the complainant's right to obtain a copy of the requested records promptly, in violation of §§1-210(a) and 1-212(a), G.S.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within seven (7) days of the date of the Final Decision in this matter, the respondents shall provide a complete copy of all records responsive to the request, described in paragraph 2 of the findings, above, free of charge, to the complainant at his correctional facility.
2. In addition, forthwith, the respondents shall contact the Commission to arrange for training to be connected by the Commission staff.
3. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 10, 2021.

Wendy Paradis
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:

RUSSELL PEELER, #254490, Northern Correctional Institution, P.O. Box 665, Somers, CT 06071

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

Wendy Paradis
Acting Clerk of the Commission