

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Howard Gombert Jr.,

Complainant

against

Docket #FIC 2020-0151

Spencer Cerruto, Chief,
Police Department, Town of
New Milford; Police Department,
Town of New Milford; and
Town of New Milford,

Respondents

October 13, 2021

The above-captioned matter was heard as a contested case on February 18, 2021, 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 The complainant is incarcerated at a facility of the Connecticut Department of Correction.

Subsequently, the complainant filed three after-filed exhibits which have been admitted into evidence, without objection, and marked as follows: Complainant's Exhibit H (after-filed): Packet of Tracking Reports; Complainant's Exhibit I (after-filed): Page 2 of Incident Report; and Complainant's Exhibit J (after-filed): Page 6 of 6 of "Return for and Inventory Property Seized on Search and Seizure Warrant". In addition, pursuant to an order of the hearing officer, the respondents filed one after-filed exhibit which has been admitted into evidence, over the objection of the complainant,² and marked as follows: Respondents' Exhibit 3 (after-filed): List regarding Property Items and Numbers.

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 the complainant made a February 27, 2020 request for:

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

² The Commission notes that the complainant did not initially object to the hearing officer's order. His objection was submitted after the hearing by letter received on April 14, 2021.

- a. A complete copy of “any” search warrant(s)[sic] used by New Milford Police to search 9 Elmwood Rd, New Fairfield, CT, between 2000-and-2004;
- b. Copies of “all” search warrant(s) [sic] used by New Milford Police to search any of Mr. Howard Gombert Jr’s vehicles;
- c. Copies of “all” photos taken during any search involving Mr. Gombert by New Milford Police, with N.Y. as well;
- d. Copies of “all” photos taken of seized property involving Mr. Gombert by New Milford Police, with N.Y. as well;
- e. Copies of “any” and “all” photos taken of Mr. Howard Gombert Jr on 2-29-2000 by New Milford Police Dept.;
- f. Photos of “any” and “all” seized property given to the N.Y. Police by New Milford Police involving Mr. Howard Gombert Jr., in any way. [Emphasis omitted]. (“February 27th request”).

3. By letter and accompanying affidavit received on March 26, 2020,³ the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to respond to his February 27th request, described in paragraph 2, above. The complainant also requested the imposition of civil penalties against the respondents.

4. At the time of the request in this matter, section 1-200(5), G.S., provided:

“[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.⁴

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

³ 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. Consequently, the Commission retains jurisdiction.

⁴ The Commission notes that section 1-200(5), G.S., was subsequently amended to include the term “videotaped”. See June Sp. Sess. Public Act 21-2, §147.

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

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

7. At the hearing and in two separate post-hearing submissions to the hearing officer received April 7, 2021, and April 14, 2021, respectively, the complainant alleged that he was not provided with any records responsive to his February 27th request. In addition, the complainant alleged that the respondents failed to provide him with all records responsive to a July 19, 2019 records request, which request was at issue in a separate matter involving the complainant and decided by the Commission. See Docket #FIC 2019-0529; Howard Gombart, Jr. v. Chief, Police Department, Town of New Milford; Police Department, Town of New Milford; and Town of New Milford (January 27, 2021).⁵ Such final decision was not appealed.

8. The respondents testified that they searched for records responsive to the February 27th request, and that all records in their possession pertaining to the complainant were previously provided to the complainant in response to the July 19, 2019 request, described in paragraph 7, above. The respondents requested that the hearing officer take administrative notice of Docket #FIC 2019-0529.

9. The Commission takes administrative notice of the administrative record and final decision in Docket #FIC 2019-0529. In that matter, the Commission found that “the respondents conducted a diligent search for the requested records, including a search of all archived records,

⁵ The complainant’s July 19, 2019 request was for:

- a. Copies of all photo(s) taken of the “crime scene” at 322A Aspetuck Ridge Road, New Milford, CT 06776 on or after 2/29/2000 involving investigations into Howard Gombert, Jr., taken by any law enforcement with New Milford Police Department;
- b. Copies of inventories and photo(s) of “ANY” seized property that New Milford Police “gave to” or “allowed” New York authorities to take from Mr. Gombert’s residence or vehicles;
- c. Copies of inventories of any property seized from Howard J. Gombert, Jr., with disposition(s) of said seized property; and
- d. Copies of all “court order(s)” that allowed New Milford Police Department to give to New York Police, or allowed New York [Police] to take property from Mr. Gombert’s residence or vehicle(s) on their own.

Copies of the complainant’s July 19, 2019 request, and transcript of the administrative hearing, in Docket #FIC 2019-0529, were marked in the instant matter as Complainant’s Exhibit B and Respondents’ Exhibit 2, respectively.

and did not withhold any records from the complainant". The Commission concluded that the respondents did not violate the FOI Act as alleged and dismissed the complaint in Docket #FIC 2019-0529.

10. It is found, as alleged by the complainant in his complaint and accompanying affidavit, that the records at issue in this matter are the requested "search warrants" and "photos".⁶

11. It is found that the respondents searched their "dead records files" and records management system for records responsive to the February 27th request.

12. It is found that the respondents do not have any photos in their possession responsive to the February 27th request.

13. It is found that, among the records provided to the complainant in response to his July 19, 2019 request, was one page of a six page search and seizure warrant. It is unclear from the record as to whether such record is responsive to the February 27th request.

14. It is found that a copy of the search and seizure warrant described in paragraph 13, above, was not provided to the complainant in response to the February 27th request. However, it is also found that such record was previously provided to the complainant as described in paragraph 13, above.

15. Under the facts and circumstances of this case, it is found that the respondents did not violate the FOI Act as alleged in the complaint.

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 October 13, 2021.



Cynthia A. Cannata
Acting Clerk of the Commission

⁶ The Commission notes that although the accompanying affidavit also references a request for "court orders", the complainant testified at the hearing that "court orders" are not at issue.

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:

HOWARD GOMBERT JR., #108050, Osborn Correctional Institution, 335 Bilton Road,
P.O. Box 100, Somers, CT 06071

SPENCER CERRUTO, CHIEF, POLICE DEPARTMENT, TOWN OF NEW MILFORD; POLICE DEPARTMENT, TOWN OF NEW MILFORD; AND TOWN OF NEW MILFORD, c/o Attorney D. Randall DiBella, Cramer & Anderson, LLP, 51 Main Street, New Milford, CT 06776



Cynthia A. Cannata
Acting Clerk of the Commission