

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ian Wright,

Complainant

against

Docket #FIC 2020-0213

Chairperson, State of Connecticut,
Board of Pardons and Paroles; and
State of Connecticut,
Board of Pardons and Paroles,

Respondents

October 27, 2021

The above-captioned matter was heard as a contested case on June 21, 2021, at which time 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 handwritten letter dated April 27, 2020, the complainant requested the following records:
 - (a) Any and all documents created or maintained by the respondents regarding David Bispham and his parole eligibility, parole denial, parole status, and parole hearing outcome, before and after he was paroled;
 - (b) Any and all documents created or maintained by the respondents regarding Michael Wright and his parole eligibility or parole denial, before and after his deportation;
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 documents “relating to the stipulated judgment entered into between Wright and the state/respondents in his habeas corpus petition in state court”.

3. By letter of complaint, dated May 4, 2020 and filed May 15, 2020², the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records, described in paragraph 2, above.

4. At the time of the request, §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.³

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 ... (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. 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.”

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

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.

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

9. At the hearing in this matter, the respondents' witness testified, and it is found, that the respondents did not receive the request from the complainant at or around the date of such request and did not become aware of the request until they received a copy of it from the Commission several months later.

10. It is found that, on the advice of counsel, the respondents took no steps to respond or comply with the request even after they received it from the Commission as part of the complaint. It is also found that, as of the date of the hearing in this matter, the respondents still had not complied with the request or responded to it in any way.

11. Counsel for the respondents argued, at the hearing, that because the request was not received prior to the filing of the complaint in this matter, there was no denial and therefore no violation of the FOI Act.

12. The Commission agrees that, under the specific facts of this case, 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., at the time the complaint in this matter was filed.

13. It is therefore concluded that, because there was no denial, the respondents did not violate the FOI Act, as alleged by the complainant.

14. However, the Commission is dismayed by the respondents' decision not to comply with the request once they became aware of it. Complying with the requirements of the FOI Act is a primary duty of every public agency and is not "second class to any other statutory duty or command." Comm'r of Dep't of Emergency Services & Pub. Prot. v. Freedom of Info. Comm'n, 70 Conn. L. Rptr. 203, 2020 WL 5540637, at *3 (July 2, 2020). Although the respondents did not violate the FOI Act under the specific facts of this case, the respondents unquestionably violated the spirit of the Act when they chose to disregard the complainant's request for public records. The Commission is hopeful that, should this factual scenario present itself again, the respondents will act in accordance with the spirit of the law.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 27, 2021.



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:

IAN WRIGHT, #286236, Osborn Correctional Institution, 335 Bilton Road, P.O. Box 100, Somers, CT 06071

CARLETON GILES, CHAIRPERSON, STATE OF CONNECTICUT, BOARD OF PARDONS AND PAROLES; AND STATE OF CONNECTICUT, BOARD OF PARDONS AND PAROLES, c/o Attorney Leland J. Moore, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission