

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Willard B. Marsden,

FINAL DECISION

Complainant

Docket #FIC84-189

against

July 10, 1985

Chief, Middletown Police
Department,

Respondents

The above captioned matter was heard as a contested case on December 20, 1984 at which time it was continued to May 16, 1985. The complainant and the respondent appeared and presented testimony, exhibits and argument on the complainant.

After consideration of the entire record the following facts are found:

1. The respondent is a public agency within the meaning of §1-18a(a), G.S.
2. On or about July 23, 1984 the complainant read a newspaper article which stated that the office of the state's attorney was at that time reviewing an arrest warrant application submitted by the Middletown police department regarding the death of Theodore Ershena.
3. On July 25, 1984 the complainant made a request of the respondent for the arrest warrant application.
4. By letter dated July 27, 1984 the respondent indicated to the complainant that his request had been referred to the office of the state's attorney for Middlesex County.
5. A request directed to the office of the state's attorney was denied on the ground that the office was not a public agency within the meaning of §1-18a(a), G.S.
6. By letter of complaint filed with the Commission on August 27, 1984 the complainant appealed the respondent's failure to provide him with a copy of the requested record. A complaint against the office of the state's attorney was withdrawn at hearing.
7. On December 18, 1984 counsel for the respondent forwarded to the complainant a copy of a warrant application dated September 19, 1984.

8. Also on December 18, 1984 the respondent submitted to the Commission a motion to dismiss the complaint on the ground that the requested record had been provided, which motion is hereby denied.

9. It is found that the respondent's referral of the complainant's request to the office of the state's attorney without further explanation to the complainant constituted a denial of the request.

10. The respondent failed to offer any proof that his denial of the complainant's request was permissible under the Freedom of Information Act, other state statute or federal law.

11. It is concluded that the respondent violated §§1-15 and 1-19(a) when on July 27, 1984 he provided the complainant with neither the record requested nor an explanation of why his request was being denied.

12. To explain the September date of the application when the record had supposedly been created in July, the respondent indicated that the state's attorney occasionally reviews an application, indicates suggested changes and sends it back to the police department for correction. The respondent hypothesized that in July an application might have been sent, corrected by the state's attorney, sent back and destroyed as a draft when the corrected version was created.

13. The record provided to the complainant on December 18, 1984 is the only document currently in the files of the Middletown police department relating to the application requested by the complainant.

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

1. The respondent shall henceforth act in strict compliance with the requirements of the Freedom of Information Act regarding access to public records. The Middletown police department may not relieve itself of its responsibilities under the Act by delegating authority over its records to the office of the state's attorney.

Approved by order of the Freedom of Information Commission at its regular meeting of July 10, 1985.



Mary Jo Jolicoeur
Clerk of the Commission