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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Kimberly Albright,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-324

Chief, Police Department, City of Waterbury;  
and Police Department, City of Waterbury,  
Respondent(s)

January 23, 2013

### Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, February 27, 2013**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE February 15, 2013**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE February 15, 2013**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE February 15, 2013**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of  
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Kimberly Albright  
Kevin J. Daly, Esq.

2013-1-23/FIC# 2012-324/Trans/wrbp/VDH//TAH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Kimberly Albright,

Complainant

against

Docket #FIC 2012-324

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

Respondents

January 23, 2013

The above-captioned matter was heard as a contested case on November 8, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. Regrettably, the Commission became aware that, due to technical difficulties concerning a system upgrade, the November 8, 2012 hearing was not recorded. By order of the hearing officer, the November 8, 2012 hearing was reopened, and a new contested case hearing was scheduled for January 10, 2013, at which time the parties appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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 June 8, 2012, the complainant requested that the respondents provide her with copies of records pertaining to an arrest on June 2, 2012 and to telephone calls placed to and from the respondent police department on June 2 and June 4, 2012, as follows:

Information on arrest date June 2, 2012. . . . all phone calls to this department on June 2, 2012 and June 4, 2012 and all calls made to dispatch by others and the police officer(s) in regard to the dates in June 2012. . . . Please provide any and all police reports, documents, records, files, information, data, mug shots, CAD Call information, log entries, all calls, fingerprints. . . Uniform Arrest Reports. . . photos. . . and evidence seized, and all papers signed by Kimberly at the

Waterbury Police Department, names of all police employees, etc., related to or associated with this FOI Act request.

3. It is further found that the complainant requested that the respondents waive the fee for the requested records, asserting that she was indigent.

4. It is found that, by letter dated June 12, 2012, the respondents acknowledged the complainant's request, and further stated that they would contact her once they determined if they maintained records responsive to the request.

5. By letter dated and filed June 18, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying her request for copies of the records described in paragraph 2, above.

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

"Public 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

7. Section 1-210(a), G.S., provides in relevant part that:

Except 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.

8. Section 1-212(a), G.S., provides in relevant part that "[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

9. It is concluded that the requested records are public records within the meaning of §§1-205(a), 1-210(a), and 1-212(a), G.S.

10. Section 1-212(d)(1), G.S., provides that “[a] public agency shall waive any fee provided for in this section when: The person requesting the records is an indigent individual.”

11. The sole issue in this case is whether the respondents’ standard for determining indigence and waiving copying costs for individual requesters violates the provision of §1-212(d)(1), G.S.

12. The Commission has repeatedly held that each public agency may establish its own standard of indigence.

13. It is found that the respondents have a standard of indigence, and that in order to apply it they reasonably need, and may require, a financial affidavit from any requesting party.

14. It found that, by letter dated July 3, 2012, the respondents informed the complainant that they had six pages of non-exempt records responsive to the request, and one record concerning a pending criminal matter, which they believed was exempt from disclosure. It is further found that, with regard to the six pages, the respondents informed the complainant that she could obtain copies by submitting a \$3.00 payment to the City of Waterbury, or by completing an “indigency affidavit” before a notary public. It is found that the respondents’ July 3, 2012 correspondence enclosed for the complainant a blank copy of the respondents’ standard financial affidavit.

15. It is found that the respondents’ financial affidavit requires the requester to provide the following information: 1) the requester’s name; 2) the requester’s signature under oath; and 3) a notary public’s (or a commissioner of the superior court’s) certification. In addition, it is found that the affidavit states that, by signing the form and having it notarized, the requester is averring that he or she has had “\$5.00 or less in liquid assets” for “the period of ninety (90) days prior to the [date of the] request for information.”

16. It is found that the respondents have used this standard for determining a requester’s indigence for more than two years.

17. It is found that the complainant refused to complete the respondents’ financial affidavit, but rather provided the respondents with a judicial application for waiver of fees, which was submitted by the complainant to the New Britain Superior Court on June 20, 2012, and approved by the court on June 22, 2012.

18. The complainant raises several legal arguments in this case to advance her position that she should be provided with the records free of charge, without having to complete the respondents’ financial affidavit: first, the complainant contends that all state agencies should be required to look to federal poverty guidelines or to Conn. Gen. Stat. §52-529b in order to achieve a uniform standard of indigence; second, the complainant contends that the information provided to the respondents in the judicial application for


waiver of fees should satisfy the respondents' standard, thereby relieving her of the requirement to complete their financial affidavit; and finally, the complainant contends that, because she requires the requested records to defend herself in criminal matter, and because she has not received the records through criminal discovery as she should have, this Commission should recognize that there is a liberty interest at stake, and should order disclosure of the records regardless of whether she complies with the respondents' financial affidavit requirement.

19. First, the complainant overlooks the fact that it is well settled that an administrative agency may implement a standard for determining indigence, as long as such standard is fair, reasonable and objective, and applied in a non-discriminatory manner. See, e.g. May v. FOIC, HHBCV064011456, 2007 Conn. Super LEXIS 1070, \*11 (Conn. Super. Ct. 2007) ("the evident scheme of the [FOI Act] is to leave the matter of . . . waiving the costs of copying to the agency in question. Determining who is indigent is simply part of the task of determining when to waive costs."). Moreover, depending on the entitlement or the benefit requested, and the nature of the judicial or administrative forum in which such entitlement or benefit is requested, the definition of indigence varies. See id. at 12, n.7 (comparing the definition of indigence in Conn. Gen. Stat. §51-297(f) with the definition of indigence in Conn. Gen. Stat. §52-259b(b)). Second, the complainant's argument that the judicial fee waiver form and the respondents' financial affidavit are fungible overlooks, inter alia, the fact that the respondents' affidavit contains a ninety-day look back provision not contained in the judicial form. Finally, rather than interject an inapplicable criminal discovery argument into this case, see Chief of Police v. FOIC, 252 Conn. 377, 386 (1999) (concluding that "requests for records under the [FOI Act] are to be determined by reference to the provisions of the act, irrespective of whether they are or otherwise would be disclosable under the rules of state discovery. . . whether civil or criminal"), the complainant could have received the majority of the records she desires simply by providing the respondents with the very limited information they require, see ¶ 15, above.

20. It is concluded that the respondents did not violate §1-212(d)(1), G.S.; by requiring that the complainant complete and submit the required financial affidavit before the respondents would consider waiving the fee for the copies.

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.

  
Valicia Dee Harmon  
as Hearing Officer