

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2016-0302

Commissioner, State of Connecticut,
Department of Emergency Services
and Public Protection, Division of
State Police; and State of Connecticut,
Department of Emergency Services
and Public Protection, Division of
State Police,

Respondents

March 8, 2017

The above-captioned matter was heard as a contested case on July 14, 2016, at which time the complainant and the respondents 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. By letter of complaint filed April 18, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide copies of public records.
3. It is found that the complainant made an April 1, 2016 request to the respondents for “information related to all arrests [emphasis in original] made or processed by L-Troop during March 2016.” For each arrest the complainant requested the following:
 - a. the complete name and address of the person arrested;
 - b. the race of every person arrested;
 - c. the date, time, and location of the arrest;
 - d. a list of all charges;

- e. any arrest warrant application and any related documents such as affidavits;
- f. the official arrest, incident, or similar report;
- g. a copy of any and all test results related to the arrests;
- h. any reports your agency maintains that document or depict the arrest or custody of the persons arrested;
- i. any video and audio recording of the arrest and detention of the persons arrested;
- j. any other records your agency maintains that document or depict the arrest or custody of the persons arrested.

4. The complainant additionally requested:

- a. copy of a case incident report that would list all of the arrests made by L-Troop during March of 2016;
- b. a computer printout that would list the names of any person arrested by L-Troop during March of 2016 and a computer PDF file that would list the names of any person arrested by L-Troop during March of 2016;
- c. a computer file of the entire phone logs for Troop L for the month of March 2016 including 911 calls with appropriate redaction related to the 911 calls only; and
- d. legible copies of any breath strips kept in a log book at L-Troop created during the month of March 2016. If the log book pages are numbered please make sure that the page numbers are visible on the copies.

5. It is found that the respondents acknowledged the request on April 7, 2016.

6. It is found that, by letter dated April 26, 2016, the respondents advised the complainant that, based upon the size of his request and the respondents' currently available resources, they could not accommodate his request "within any reasonable time period." Accordingly, the respondents asked the complainant to limit the scope of his request.

7. It is found that, by letter dated May 3, 2016, the respondents provided 6 pages of record of arrest information regarding DUI arrests made by Troop L in March 2016; advised the complainant that the requests described in paragraph 3.e, 3.f, and 3.h of the findings, above, were part of open investigative files that would require prepayment of \$16.00 per report once the investigations were closed; and that audio and video records required review by the respondents prior to their release.

8. It is found that, by letter dated May 4, 2016 the respondents advised the complainant that the requested phone log consisted of 234 pages, would require review prior to disclosure, and that the respondents would require prepayment in the amount of

\$58.50. The respondents reminded the complainant of the scope of his request and the respondents' limited resources, and again asked the complainant to limit the scope of his request.

9. It is found that, by letter dated May 12, 2016, the complainant declined to narrow the scope of his request.

10. It is found that, by letter dated May 15, 2016, the complainant declined to submit prepayment for the 234 pages of phone logs, and instead advised the respondents, "Please let me know when the 234 pages are available for review. I hope you will agree that because there is no fee to access records and review them there is no need for prepayment." The complainant again declined to meaningfully limit the scope of his request, and purported to be confused by the respondents' request that he do so. Finally, the complainant objected to the respondents' decision to review the 234 pages of phone logs because such review would delay their release.

11. It is found that, by letter dated May 24, 2016, the respondents advised the complainant that review of the phone logs was necessary in order to redact, if contained in the logs, the phone numbers of state troopers and state's attorneys, witnesses, informants, and troopers' family members.

12. It is found that, by letter dated May 28, 2016, the complainant again objected to the respondents' reviewing the phone logs before providing them to him.

13. It is found that the respondents were reluctant to review and redact the phone logs without prepayment by the complainant, because the complainant has a practice of requesting records, refusing to prepay, and ultimately declining to review the records once they have been assembled because, in the complainant's words, "it's not worth it."

14. It is found that, by letter dated June 14, 2016, the respondents provided to the complainant an arrest warrant and affidavit regarding case CFS 16-00018006; a copy of all audio regarding that case; a Case Incident Report listing all arrests by Troop L during the month of March 2016; a report listing the names of each individual arrested by Troop L during the months of March and April 2016, redacted pursuant to §§1-210(b)(3)(F)¹ and 46b-124, G.S.²; and a report listing the record of 911 calls into Troop L during the month of March 2016, redacted pursuant to §28-28a, G.S.³

¹ Section 1-210(b)(3)(F), G.S., provides that disclosure is not required of "Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes"

² Section 46b-124, G.S., provides for the confidentiality of records of cases in juvenile matters, with exceptions not applicable in this case.

³ Section 28-28a, G.S., limits the use of "subscriber information" concerning individuals who make 911 calls.

15. It is found that the respondents initially withheld the requested "test strips" described in paragraph 4.d, above, on the grounds that prosecutions were still pending against the persons tested, and the test strips therefore were not required to be disclosed pursuant to §1-215, G.S.⁴ The respondents subsequently provided two sets of test strips to the complainant at the hearing on this matter.

⁴ §1-215, G.S., provides:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

16. It is found that, by letter dated June 20, 2016, the respondents advised the complainant that, based upon the size of his request, their current technology, and their staffing levels, the respondents could not accommodate his request for all video out of Troop L for every arrest made in March of 2016. The respondents further advised the complainant that they had ordered a list of all arrests made out of Troop L for March of 2016, and would forward the same to the complainant when it was received.

17. It is found that, based upon the respondents' current staffing, current technology, and the size of the complainant's request, it would take longer for the respondents to copy all of the video of all the arrests made at Troop L for March of 2016 than the amount of time before the storage capacity of the video recorders is exceeded and the March 2016 videos are recorded over by new video. That is, it is unreasonable, if not impossible, for the respondents to attempt to provide a copy of all the video of all the arrests to the complainant.

18. 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.

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

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.

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

21. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

22. It is found that the respondents' provision of records to the complainant was thorough and prompt under the facts and circumstances of this case, given the scope of

the request, the number of other requests made by the complainant, and the respondents' current resources. In this regard, the Commission notes the conclusion of the decision of the Superior Court in Docket No. HHB CV-15-5016760-S, James Torlai v. FOIC, Memorandum of Decision dated June 27, 2016 (Schuman, J):

It was thus entirely proper for the [FOI] commission to weigh all the factors and consider the practical realities of complying with the plaintiff's request. Essentially, the plaintiff lodged a time-consuming, complex request for records with an overburdened and understaffed compliance unit. The plaintiff has never stated a reason why he needed more immediate compliance, which is a valid factor for the commission to consider under its advisory opinion. Further, the plaintiff's brief is noteworthy for the plaintiff's complete lack of acceptance of responsibility for any part of the problem. Complying with the plaintiff's current request was in itself a large undertaking. But the plaintiff filed an astonishing 42 other records requests with the department during this two year period. This sort of deluge cannot help but overwhelm a state agency. The plaintiff cannot expect a state agency to ignore all its other important functions and cater to his own requests, especially when the plaintiff expresses no valid reason for more immediate compliance. Given the difficult circumstances that the plaintiff helped to create, the commission reasonably and correctly determined that the department acted promptly

23. It is concluded that the respondents did not violate the FOI Act as alleged.

24. The respondents requested the imposition of a civil penalty against the complainant, pursuant to §1-206(b)(2), G.S., which provides in relevant part:

If the commission finds that a person has taken an appeal under this subsection frivolously, without reasonable grounds and solely for the purpose of harassing the agency from which the appeal has been taken, after such person has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against that person a civil penalty of not less than twenty dollars nor more than one thousand dollars.

25. It is found that the complainant makes no use of the records he requests other than to review them to see if they are "accurate." Some he never looks at.

26. It is found that the complainant's claimed purpose in requesting records from the respondents is to find "discrepancies" between the respondents' records and court records.

27. It is found that the complainant uses these claimed "inaccuracies" simply to generate new requests for records from the respondents based on what he perceives as discrepancies between the respondents' records and court records. The respondents accurately described this as a game of "gotcha" in which the complainant seeks to catch the respondents in technical violations of the FOI Act.

28. It is found that the complainant has no interest in the actual contents of the records he requests, apart from their use in generating still more requests for records from the respondents.

29. It is found that the complainant requests records, not because he is seeking information, but because he believes it is his responsibility to "make the respondents comply" with the FOI Act.

30. It is found that the complainant targets Troop L because he was once arrested there.

31. The Commission takes administrative notice of its records and files to find that the complainant has similarly used the FOI Act to target the Troop L state trooper that arrested him. *See, e.g.,* Docket #FIC 2014-932, Torlai v. DESPP et al.

32. It is found that the complainant's testimony that it is not his intention to harass the respondents is not credible.

33. The Commission additionally takes administrative notice of its records and files in Docket #FIC 2014-867, Torlai v. DESPP et al., in which it declined to impose a civil penalty against the complainant, but cautioned him:

While the Commission accepts [the complainant's] explanation, the complainant is cautioned that his behavior with regard to these respondents is peppered with indications of harassment.

34. It is found that this complaint was filed frivolously, without reasonable grounds and solely for the purpose of harassing the respondents.

35. It is also found that the complainant used the Commission's administrative process in order to harass the respondents.

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.

2. The complainant shall remit a civil penalty to the Commission in the amount of one hundred dollars.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 8, 2017.



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:

James Torlai
127 Barton Street
Torrington, CT 06790

Commissioner, State of Connecticut, Department of
Emergency Services and Public Protection, Division
of State Police; and State of Connecticut, Department
of Emergency Services and Public Protection,
Division of State Police
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