

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Stephen Williams,

Complainant

against

Docket #FIC 2016-0775

Dora Schriro, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State
of Connecticut, Department of
Emergency Services and Public
Protection,

Respondents

March 22, 2017

The above-captioned matter was heard as a contested case on January 31, 2017, 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. On August 15, 2016, the complainant sent a request to the respondents for copies of records concerning the investigation of Gina Mancini Pickett, case file 1500205843. The complainant also requested copies of records concerning the State's Attorney's request that the Central District Major Crime Squad conduct the investigation and the selection of personnel to conduct such investigation.
3. It is found that on September 1, 2016, the respondents' Legal Affairs Unit informed the complainant that he needed to pay \$16.00 to begin their search, pursuant to §29-10(b), G.S.
4. It is found that the complainant promptly provided such payment to the respondents, which they received on September 13, 2016.
5. It is found that, on September 23, 2016, the Legal Affairs Unit sent the complainant's request to the respondents' Reports and Records Unit, indicating that the request was pursuant to the Freedom of Information ("FOI") Act.

6. By letter filed October 6, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide copies of the records he requested. The complainant requested the imposition of a civil penalty.

7. 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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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

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

11. It is found that on November 1, 2016, the complainant asked the respondents about the status of his request. It is found that the Legal Affairs Unit replied that the investigation file had been requested and that once the Legal Affairs Unit received the file, it would need to review it for exemptions.

12. It is found that, on December 23, 2016, the attorney at the Legal Affairs Unit responsible for handling the complainant’s request asked the Reports and Records Unit for an update on the status of his request.

13. It is found that the Reports and Records Unit Supervisor replied that they were currently working on fulfilling requests received November 22, 2015.

14. It is found that in mid-January 2017, Reports and Records Unit personnel estimated that the complainant’s request, received August 18, 2016, would not be sent to the Legal Affairs Unit for review until late November 2017, a fifteen-month delay. It is found that the Legal

Affairs Unit will then need to review the records for exemptions, and so the complainant would most likely not receive his requested records until the end of 2017 at the earliest.

15. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

16. It is found that the complainant's request was straightforward, well-defined, and does not seem to apply to a large volume of records. It is found that the Legal Affairs Unit and the Reports and Records Unit have time constraints under which they must complete its other work, such as providing records in response to law enforcement involved in ongoing investigations or pending prosecutions, in response to subpoenas, and in response to Victim Advocate requests pursuant to statute.

17. It is found that the respondents' Legal Affairs Unit and Reports and Records Unit are severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts.

18. Nevertheless, it is found that the one and a half to two-year wait before providing records in response to a simple request pursuant to the FOI Act is unacceptable.

19. It is found, therefore, that the respondents failed to provide records to the complainant in a prompt manner.

20. It is concluded, accordingly, that the respondents violated §§1-210(a) and 1-212(a), G.S.

21. With respect to the complainant's request for the imposition of civil penalties, §1-206(b)(2), G.S., provides in relevant part:

... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial 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 the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

22. It is found that authority to hire more staff to help reduce the long delays in complying requests for records under the FOI Act lies exclusively with the Connecticut Office of Policy and Management. In light of such restrictions, and the severe budget constraints facing the respondents, it is found that the respondent commissioner's failure to provide records to the complainant promptly was not without reasonable grounds, under the circumstances of this case.

23. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondent commissioner.

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

1. Henceforth, the respondents shall comply with the promptness requirements of §§1-210(a), 1-212(a).

2. Within two weeks of the transmittal of the notice of final decision in this matter, the respondents Reports and Records Unit shall provide the requested records to the Legal Affairs Unit for review. Within two weeks of receipt of the requested records from the Reports and Records Unit, the Legal Affairs Unit shall provide the requested records, redacted if necessary, to the complainant, free of charge.

Approved by Order of the Freedom of Information Commission at its regular meeting of March 22, 2017.



Cynthia A. Cannata
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:

Stephen Williams
12 September Road
Storrs, CT 06268

Dora Schriro, Commissioner, State of Connecticut,
Department of Emergency Services and Public Protection;
and State of Connecticut, Department of Emergency
Services and Public Protection
c/o Stephen R. Sarnoski, Esq.
Assistant Attorney General
State of Connecticut,
Office of the Attorney General
110 Sherman Street
Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission