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Tyrone Pierce,
Complainant(s)
against

Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,
Respondent(s)

Notice of Meeting

Docket #FIC 2015-791

August 12, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, September 14, 2016.** 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 September 2, 2016***. 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, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE September 2, 2016***. **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 representatlves and (3) be llmited 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 **fifteen (15) copies** be filed ***ON OR BEFORE September 2, 2016***, 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: Tyrone Pierce
Assistant Attorney General Steven M. Barry

FIC# 2015-791/Trans/wrbp/PSP//VDH/2016-08-12

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by — Report of Hearing Officer

Tyrone Pierce,

Complainant — Docket # FIC 2015-791

against

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

Respondents — August 11, 2016

The above-captioned matter was heard as a contested case on July 19, 2016, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, et al., Superior Court, J.D., of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 22, 2015, the complainant made a written request to the respondents for copies of the following:

[a] The file number to my complaint I sent to I.A.D. [on] 11-16-14 [;]

[b] The name of the investigat[ing] officer to my complaint dated 11-16-14 [; and]

[c] The investigative report to my complaint sent to I.A.D., Conn. State Police on 11-16-14.

3. It is found that by letter dated June 30, 2015, the respondents informed the complainant that his June 22, 2015 request, described in paragraph 2, above, was referred to the Legal Affairs Unit for review and processing, and that he would be notified as soon as possible of the results of their review as well as any fees that might be due. The respondents also requested that the complainant reference "File No.: 15-510" on all communications to the agency to ensure timely processing of his request.

4. It is found that by letter dated October 29, 2015, the complainant made a written request to the respondents for copies of records similar to those requested in the June 22, 2015 request, described in paragraph 2, above. Specifically, the complainant requested the following:

> [a] On the File No. 15-510, the name of the investigating officer assign[ed] to my complaint filed on 11-16-14 [;]
>
> [b] The investigati[ve] report to my complaint sen[t] to I.A.D. Conn. State Police on 11-16-14 [; and]
>
> [c] Any and all notes made by the investigating officer assign[ed] to File No. 15-510.

It is found, based on testimony provided by the complainant at the hearing, that he believed "File No.: 15-510" was the number assigned to his "complaint filed on 11-16-14," and not the reference number to be utilized with respect to his records request.

5. It is found that by letter dated November 12, 2015, the complainant followed-up with the respondents regarding their compliance with his October 29, 2015 request, described in paragraph 4, above.

6. By letter of complaint, dated November 16, 2015, and received on November 18, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of the records, described in paragraph 4, above.

7. Section 1-200(5), G.S., defines "public records or files" as:

> 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.

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

9. 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."

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

11. It is found that by letter dated December 3, 2015, the respondents provided the complainant with a case incident report listing incidents pertaining to Tyronne Pierce. The respondents informed the complainant that if he needed copies of any of the investigative reports listed, he could direct his request to their Reports and Records unit.

12. It is found that by letter dated June 30, 2016, the respondents provided the complainant with a second copy of their December 3, 2015 letter, described in paragraph 11, above, including the incident report listing. The respondents informed the complainant that they conducted a search utilizing his name and date of birth, and that it did not appear that there was an incident dated November 16, 2014. The respondents also informed the complainant that a search was conducted by the Professional Standards Unit – Internal Affairs concerning any complaints filed by the complainant and that there were no records responsive to his request.

13. At the hearing, the complainant acknowledged that the respondents provided him with records in response to his October 29th request, but contended that such records were not responsive. The complainant testified that, contrary to the respondents' statement in their June 30, 2016 letter, described in paragraph 12, above, the respondents should possess complaints that were filed by the complainant with their Internal Affairs Unit on May 13, 2013, and November 16, 2014, and that, at least with respect to the 2013 complaint, he had received a signed certified mail receipt of such complaint.

14. At the hearing, Evett Perez, a paralegal in the respondents' Legal Affairs Unit, credibly testified that a search was made in the respondents' Crimes Analysis Division and the Professional Standards Internal Affairs Unit for records that she believed might be responsive to the complainant's records requests, including all complaints filed by the complainant against the State Police. Ms. Perez testified that she did not locate any complaints filed by the complainant against the State Police.

15. It is found that the respondents do not maintain records responsive to the complainant's records requests.

16. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., as alleged 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 complaint is hereby dismissed.

Paula S. Pearlman
as Hearing Officer

FIC/2015-791/HOR/PSP/08112016