

Since 1975



FREEDOM OF INFORMATION

Connecticut Freedom of Information Commission • 165 Capitol Avenue, Suite 1100 • Hartford, CT 06106
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Russell Peeler

Complainant(s)

against

Rebeca Garcia, Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport

Respondent(s)

Notice of Meeting

Docket #FIC 2021-0475

July 27, 2022

Corrected 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 remotely, at the Freedom of Information Commission, 165 Capitol Avenue, Suite 1100, Hartford, CT., at **2:00 p.m. on Wednesday, August 10, 2022.**

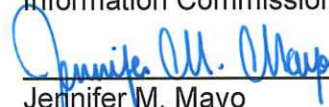
At the meeting you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE July 29, 2022.** 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.**

NOTICE: Due to public health concerns surrounding the COVID-19 pandemic, the Commission meeting of August 10, 2022, will be held solely through the use of electronic equipment (remotely). Further guidance is included regarding the dial-in procedure to follow in the event that you wish to attend, or to present oral argument at, the August 10, 2022, meeting.

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 July 29, 2022.** 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 **fifteen (15) copies** be filed ***ON OR BEFORE July 29, 2022***, 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



Jennifer M. Mayo
Acting Clerk of the Commission

Notice to: Russell Peeler
Attorney Dina A. Scalo
Attorney Michael C. Jankovsky
cc: Anthony Campanelli

FIC# 2021-0475/ITRA/CZH/KKR/VDH/JMM/7/27/22

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Russell Peeler,

Complainant

against

Docket #FIC 2021-0475

Rebeca Garcia, Chief, Police Department,
City of Bridgeport; Police Department, City
of Bridgeport; and City of Bridgeport,

Respondents

July 21, 2022

The above-captioned matter was heard as a contested case on May 6, 2022, and July 13, 2022, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, the hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (Special Session), as amended by §1 of Public Act 22-3. At the time of the request and hearing in this matter, the complainant was incarcerated at a facility of the Connecticut Department of Correction.

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 filed on August 19, 2021, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the Commission's order in Docket #FIC 2020-0068, Russell Peeler v. Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport ("Peeler I").
3. The Commission takes administrative notice of the record and Final Decision in Peeler I.
4. In Peeler I, this Commission concluded that the respondents violated the FOI Act and ordered the respondents to provide a complete copy of a particular criminal case file, free of charge, to the complainant at his correctional facility within seven (7) days of the date of the Final Decision.
5. It is found that the Final Decision in Peeler I was dated March 10, 2021.

6. It is found that, on or about March 17, 2021, the respondents provided a copy of a portion of the requested records, some of which were redacted, to the complainant at his correctional facility.

7. It is found that, on or about March 31, 2021, the respondents provided additional responsive records to the complainant. It is also found that the respondents withheld approximately 244 pages from the records provided to the complainant.¹

8. It is found that, even as of the date of the July 13, 2022 hearing in this matter, the respondents still had not provided all responsive records to the complainant. The Commission notes that at the time of the July 13, 2022 hearing in this matter, it had been over two years and seven months since the complainant's original December 9, 2019 request in Peeler I, and it had been over a year and four months since this Commission issued its Final Decision and order in Peeler I.²

9. Based upon the foregoing, it is concluded that the respondents failed to comply with the Commission's order in Peeler I.

10. Section 1-206(b)(2), G.S., provides, in relevant part:

upon a finding that 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 the 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.

11. It is found that the respondents' failure to fully comply with the complainant's December 9, 2019 records request is an ongoing denial and violation of the complainant's right to promptly receive a complete copy of the public records he requested in Peeler I. It is also found that the respondent chief of police is the official directly responsible for such ongoing denial and violation.

12. In Peeler I, the Commission noted the following:

[a]lthough the respondents blamed the pandemic for the delay in providing the requested records to the complainant, the facts of this case, as set forth above, demonstrate that the delay was caused primarily by the

¹ In a letter to the complainant, the respondents claimed those records were exempt from disclosure pursuant to §§29-164f, 1-210(b)(3)(C), 1-210(b)(1), and 1-210(b)(3)(E), G.S.

² The Commission notes that all potentially responsive records are contained within two banker's boxes.

respondents' failure to maintain their public records in an indexed, organized, and orderly fashion. The request at issue was received by the respondents on December 13, 2019, some three months prior to the shut-down caused by the pandemic. Had the respondents maintained the public records in their custody in an indexed, organized, and orderly fashion, such records presumably could have been located quickly during the initial search conducted by Sgt. Nikola and her staff, and provided to the complainant prior to the shut-down. As the Commission previously opined: 'The fact that the respondents' method of filing and/or maintaining public records apparently lacked organization at the time of the request at issue, does not excuse undue delay in locating such records, and is not a defense to the claim that the records were not provided promptly.' See Lowthert v. Superintendent of Schools, Wilton Public Schools; and Wilton Public Schools, Docket #FIC 2014-148 (January 30, 2015).

Additionally, it is found that the respondents did not prioritize the request at issue once the requested records were located, and that such failure also contributed to the delay. The Commission is mindful that staff at state and local government agencies are continuing to work mostly or entirely from home, which can present challenges to agency operations, including responding to records requests. However, the Commission is concerned, given the length of time between the date of the request in this case and the date the requested records were located, that the respondents did not act quickly to review the records and send even a portion of them, on a rolling basis, to the complainant.

13. The July 13, 2022 hearing in this matter was convened for the purpose of providing the respondent chief of police the opportunity to be heard regarding consideration of the imposition of a civil penalty. The Commission notes that the respondent chief of police did not personally appear at the hearing. Instead, counsel for the respondents argued, as they did in Peeler I, that they only have one attorney who deals with all FOI requests and complaints, in addition to her other duties, and that the COVID-19 pandemic played a role in delaying their response.

14. While this Commission is sympathetic to the workload of the respondents' attorney, it is the respondents' duty to provide public records promptly, upon request. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, HHB-CV-18-6047741, 2020 WL 5540637, *6 (Conn. Super. Ct. July 2, 2020) (Cordani, J.), a public agency should consider its obligations under the

FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOIA duty is not a second class duty.”

15. The Commission notes that it previously has expressed concern about the respondents’ failure to promptly provide responsive records in other cases. The Commission cautioned the respondents that failure to promptly provide requested records in future cases may result in the imposition of a civil penalty. See Lonnie Owen v. Rebecca Garcia, Chief, Police Department, City of Bridgeport, et al., Docket #FIC 2021-0402 (July 14, 2022); Ethan Book v. City of Bridgeport, et al., Docket #FIC 2020-0647 (Mar. 9, 2022); Timothy Leonard v. City of Bridgeport, et al., Docket #FIC 2020-0446 (Mar. 9, 2022); Marlando Daley v. Police Department, City of Bridgeport, et al., Docket #FIC 2020-0270 (Mar. 9, 2022); Jacob Carattini v. Police Department, City of Bridgeport, et al., Docket #FIC 2019-0636 (Mar. 23, 2022).

16. It is found that the reasons given by the respondents, as described in paragraph 13, above, for the ongoing denial and violation of the complainant’s right under the FOI Act to receive public records promptly, do not constitute “reasonable grounds” for such ongoing denial and violation. It is therefore found that such ongoing denial and violation was without reasonable grounds.

17. The Commission notes that §1-240(b), G.S., provides:

[a]ny member of any public agency who fails to comply with an order of the Freedom of Information Commission shall be guilty of a class B misdemeanor and each occurrence of failure to comply with such order shall constitute a separate offense.

18. The Commission, in its discretion, declines to refer the respondents’ failure to comply with its order to the state’s attorney for criminal prosecution. However, the respondents are hereby notified that failure to comply with an order of this Commission in the future may result in such referral.

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

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant at his correctional facility a complete and unredacted copy of all records responsive to the request, described in paragraph 2 of Peeler I, free of charge.

2. The respondent Chief Rebeca Garcia shall remit to the Commission, within thirty days of the date of the Notice of Final Decision in this matter, a civil penalty in the amount of seven hundred and fifty dollars (\$750.00).

3. Henceforth, the respondents shall strictly comply with the disclosure provisions in §§1-210(a) and 1-212(a), G.S.



C. Zack Hyde
as Hearing Officer

FIC 2021-0475/CZH/KKR/07/21/2022



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Russell Peeler

Complainant(s)

Against

Docket # 2021-0475

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

Respondent(s)

July 22, 2022

NOTICE OF DIAL IN INFORMATION

Due to public health concerns surrounding the Covid 19 pandemic, the Commission Meeting of August 10, 2022, will be conducted remotely at 2:00 p.m.

Should you wish to attend the meeting remotely, please dial in at 1:50 p.m.

+1 860-840-2075

Conference ID: 782 186 327#