

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Bennie Gray,

Complainant

against

Docket #FIC 2019-0582

Peter Reichard, Chief,
Police Department,
City of New London;
Police Department,
City of New London; and
City of New London,

Respondents

August 25, 2021

The above-captioned matter was heard as a contested case on October 8, 2020, and December 30, 2020, at which times the complainant and the respondents appeared, stipulated to certain facts 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 telephonically.¹ At the time of the hearing, the complainant was incarcerated at a facility of the Connecticut Department of Correction.

Subsequently, the complainant submitted one after-filed exhibit, which has been admitted into evidence, without objection, and marked as Complainant's Exhibit R (after-filed): New London Police Department Records Division, Directive #08-02, F.O.I. Requests. In addition, the respondents submitted two after-filed exhibits, which have been admitted into evidence, without objection, and marked as Respondents' Exhibit 4 (after-filed): FOI Records Request, dated June 8, 2018; and Respondents' Exhibit 5 (after-filed): Letter from New London Police Department to Bennie Gray, dated November 13, 2019.

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 form dated June 8, 2018, the complainant made a records request to the respondents for records pertaining to New London Police Department ("NLPD") Case #01-18-001796 and concerning his arrest on May 9, 2018. Specifically, the complainant

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

requested “the police report and all supplemental reports”, “all witness statements made to police”, “photo array used in line up”, “any ID made by witness”, “name and badge numbers of the uniform[ed] police officer who made traffic stop on Gray’s vehicle”, and “photos taken of evidence.”

3. It is found that, by letter dated June 27, 2018, the respondents acknowledged the complainant’s June 8, 2018 records request, and informed him that responsive records were being provided to the Department of Correction’s Freedom of Information (“FOI”) Administrator’s Office for review, and that the FOI Administrator would forward to him any materials deemed appropriate for release. The records were sent directly to Counselor Supervisor Washington, the Department of Correction’s FOI Administrator at that time. It is found that the complainant did not receive the respondents’ June 27th letter.

4. It is found that over a year later, by letter dated August 29, 2019, the complainant followed-up on his June 8, 2018 records request and “re-request[ed]” the records sought. In addition, by the same letter, he made a “new” request for the following records from NLPD Case #01-18-001796:

[a] A full copy of any and all NLPD policies (1) on report writing by its officers, (2) policy of preservation of evidentiary value of currency seized, (3) and policy for transfer of seized evidence. i.e., currency in active prosecutions; policy of transfer of funds to City Treasurer and/or Bank [;]

[b] A full copy of document showing date Verizon mailed and NLPD received phone records for LG cellular phone (203-257-6738) Model ID: LG-VS 425 LPP and Serial ID: 801 VTT D2245801 located at New London Police Department Evidence Room under NLPD # for property: #18-0646 [;]

[c] A full copy of the records turned over by Verizon for LG cellular phone (203-257-6738) [;]

[d] A full copy of any and all NLPD policy, policies, and general order on the use of dash cameras and the perservation [sic] of dash camera footage [;]

[e] All dash camera footage logs, audio and video pertaining to the May 9, 2018 arrest in incident case #01-18-001796 by officers (1) Gregory Moreau, badge #451-CAR #SR2A, (2) Mathew Cassiere, badge #632-CAR #S2A, (3) Jeffery Nichols, badge #620-CAR #S5A, and (4) Lucas Delgrosso, badge #661-CAR #S6A [;]

[f] A copy of the log identifying vehicles assigned to officers by Unit #s for May 9, 2018: (1) Officer Todd Lynch, (2) Joseph

Pelchat and (3) Jeremy Zelinski; “Vehicle Departmental Numbers” [emphasis in original] [;]

[g] A full copy of any and all police radio transmissions calls pertaining to the incident on May 9, 2018, Case # 01-18-001796 [; and]

[h] A full copy of any and all NLPD radio codes showing the meaning of each code.

5. It is found that the respondents did not receive the August 29, 2019 request letter, described in paragraph 4, above, from the complainant.

6. By letter received on September 19, 2019,² the complainant appealed to this Commission alleging that the respondents violated the FOI Act by failing to provide him with records responsive to his August 29, 2019 records request, described in paragraph 4, above. In his complaint, the complainant also requested the imposition of civil penalties.

7. Section 1-206(a), G.S., provides in relevant part:

[a]ny denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request, except when the request is determined to be subject to subsections (b) and (c) of section 1-214, in which case such denial shall be made, in writing, within ten business days of such request. Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

8. Section 1-206(b)(1), G.S., provides in relevant part: “[a]ny person denied the right to inspect or copy records under 1-210... or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission....”

9. The Commission notes that it sent letters to the parties on November 4, 2019,

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

informing them of the complaint in this matter, and that the letters sent to the respondents included a copy of the complaint and the August 29, 2019 request letter, which the respondents received for the first time.

10. It is found that at the time of the complaint, the respondents had not denied the complainant's request for records, or denied any other right under the FOI Act within the meaning of §1-206(b)(1), G.S. Because there was no denial at the time of the complaint, it is concluded that the respondents did not violate the FOI Act under the facts of this case.

11. Nevertheless, upon receiving the notice of complaint from the Commission, the respondents searched for responsive records, and on or about January 22, 2020, the respondents sent the complainant a multi-page packet of documents (with redactions) responsive to the complainant's records requests. It is found that such records were delivered to the complainant by the Department of Correction on or about March 6, 2020.

12. Because the respondents did not violate the FOI Act under the facts of this case, consideration of the complainant's contentions raised at the hearing, and the request for consideration of the imposition of civil penalties, is not warranted.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 25, 2021.



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:

BENNIE GRAY JR., #259596, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

PETER REICHARD, CHIEF, POLICE DEPARTMENT, CITY OF NEW LONDON; POLICE DEPARTMENT, CITY OF NEW LONDON; AND CITY OF NEW LONDON, c/o Attorney Brian K. Estep, Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, P.O. Box 1351, New London, CT 06320



Cynthia A. Cannata
Acting Clerk of the Commission