

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

James Hemingway,

Complainant

against

Docket # FIC 2019-0472

Chief, Police Department, Town of North
Branford; and Police Department, Town of
North Branford,

Respondents

January 27, 2021

The above-captioned matter was heard as a contested case on October 15, 2020, at which time 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 hearing was conducted telephonically.¹

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 August 5, 2019,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all records responsive to his May 28, 2019, request.
3. It is found that on May 28, 2019, the complainant made a request to the respondent for information and records on the following topics.

- (a) The false reporting of Lydia Hemingway's enrollment into the Connecticut witness protection program from 2013-2019 when there have been no state statutorial [sic] qualification criteria met by Lydia/Alexis Hemingway;
- (b) The concealment of generated state evidence indicating the submission of fraudulent affidavits upon the court and events

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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 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.

of larceny during and after the 2013 dissolution trial;

- (c) The false reporting from Sgt. Bernardo's [sic] regarding a fictional arrest of myself in November of 2007, from Lydia Hemingway, which was later disseminated in deposition upon the former attorney for the Town of North Branford and the North Branford Police Commission in [sic];
- (d) The inquiry regarding how NBPD authenticated submitted evidence prior to requesting an arrest warrant on December 11, 2011;
- (e) NBPD's refusal to investigate the alleged violation of conditions of a protective order, after it was observed and reported by a court officer and state mandated reporter days and weeks after January 18, 2013, the date of the violation.

4. Section 1-200(5), G.S., provides:

"[p]ublic 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.

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

[e]xcept 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 . . . (3) receive a copy of such records in accordance with section 1-212.

6. 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."

7. It is found that the complainant's letter to the respondents did not constitute a request for any specifically identifiable records.

8. It is found that the records described in paragraph 3, above, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. Following the hearing on this matter, in an email dated October 15, 2020, the complainant filed an objection to the failure of respondents' counsel to provide him with a copy

of his appearance form prior to the hearing. The Commission's copy of the respondents' appearance form indicates that it was provided to the complainant via email on September 21, 2020. The complainant's objection is overruled as the complainant was unable to provide any evidence of prejudice to his presentation as the result of not knowing who was representing the respondents. Additionally, §1-21j-32 of the Regulations of Connecticut State Agencies, does not mandate service of an appearance on all parties.³

10. At hearing the respondents moved to dismiss the appeal arguing that the complainant did not make a discernable request for any specific records. However, it is found that the respondents made a reasonable effort to understand the request and disclosed copies of records that they believed were responsive to the complainant's request. A ruling on the respondents' motion to dismiss was deferred so that testimony from both parties could be heard. Having heard testimony, the motion to dismiss based solely on the format of the complainant's request, is denied.

11. It is found that the complainant confirmed receipt of the disclosed records but believed that additional records existed. He could not, however, specifically identify any records that existed that had not already been disclosed.

12. The parties were given the option to file post-hearing briefs. The respondents filed such brief on October 30, 2020. The complainant did not file a brief.

13. In their post-hearing brief, the respondents moved to dismiss the appeal pursuant to §1-206(b)(4), G.S.⁴ The motion is denied as such section provides for dismissal without a hearing. However, a hearing was held in this matter.

14. Additionally, in their post-hearing brief, the respondents moved for a finding that this appeal was taken frivolously, without reasonable grounds and solely for the purpose of harassing the respondent pursuant to §1-206(b)(2).⁵ The respondent also requested a civil penalty be assessed against the complainant. The Commission does not have grounds for such a finding based on the record in this matter and therefore declines to make such a finding. Accordingly, the Commission will not consider the imposition of a civil penalty against the complainant.

15. It is found that the respondents acted reasonably and in accordance with the FOI Act when they identified records believed to be responsive to the complainant's request and disclosed such records, despite the complainant's failure to request specifically identifiable

³ Section 1-21j-32 Each person authorized to participate in a contested case as a party or as an intervenor shall file a written notice of appearance with the clerk. Such appearance may be filed on behalf of parties and intervenors by an attorney, an agent, or other duly authorized representative subject to the rules hereinabove stated. The filing of a written appearance may be excused by the presiding officer.

⁴ Conn. Gen. Stat. Sec. 1-206(b)(4) Notwithstanding any provision of this subsection to the contrary, in the case of an appeal to the commission of a denial by a public agency, the commission may, upon motion of such agency, confirm the action of the agency and dismiss the appeal without a hearing if it finds, after examining the notice of appeal and construing all allegations most favorably to the appellant, that (A) the agency has not violated the Freedom of Information Act, or (B) the agency has committed a technical violation of the Freedom of Information Act that constitutes a harmless error that does not infringe the appellant's rights under said act.

⁵ Conn. Gen. Stat. Sec. 1-206(b)(2) ... 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.

records.

16. It is concluded that the respondents did not violate the Act 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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 27, 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:

JAMES HEMINGWAY, 3280-55A Tamiami Trail, Unit 162, Port Charlotte, FL 33952

CHIEF, POLICE DEPARTMENT, TOWN OF NORTH BRANFORD; AND POLICE DEPARTMENT, TOWN OF NORTH BRANFORD, c/o Attorney Vincent M. Marino, Marino, Zabel & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT 06477 and Attorney Barbara M. Schellenberg, Marino, Zabel & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT 06477



Cynthia A. Cannata
Acting Clerk of the Commission