

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Luis Colon Ortega,

Complainant

against

Docket # FIC 2020-0251

Fernando Spagnolo, Chief, Police
Department, City of Waterbury; Police
Department, City of Waterbury; and City of
Waterbury,

Respondents

June 23, 2021

The above-captioned matter was heard as a contested case on April 9, 2021, at which time 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 hearing was conducted telephonically.¹ Attorney Valicia Harmon provided Spanish-English translation as the complainant is primarily a Spanish speaker.

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 June 5, 2020, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records maintained by the respondents. The complainant also requested that the Commission consider imposing a civil penalty against the respondents.

3. It is found that, by letter dated May 21, 2020, the complainant requested that the respondents provide him with copies of thirty-four categories of records related to a murder investigation assigned Waterbury police case number 12-25376. Additionally, enclosed with the request, the complainant included an "affidavit of indigency," swearing that he was indigent and unable to pay any fees incurred for such records.

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

4. It is found that, by letter dated June 3, 2020, the respondents acknowledged the complainant's request and included with such letter a statement of the respondents' indigency policy which required the complainant to provide proof of indigency.²

5. It is found that, by letter dated August 17, 2020, the respondents informed the complainant that the records requested had been compiled and a payment of fees totaling \$223.00 was necessary. It is further found that as of the date of the hearing in this matter, the complainant has not paid the required fee and therefore the respondents have not disclosed the requested records to the complainant.

6. 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.

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

[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 (1) inspect such records promptly during regular office or business hours ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

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

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

10. With regard to fees to be paid to municipal agencies for any copy provided in accordance with the Freedom of Information Act, §1-212(a)(B), G.S., provides that such fee shall not exceed fifty cents per page. Additionally, §1-212(d), G.S., provides that "the public

² Waterbury Proof of Indigency Policy: For copies of records requested pursuant to the Freedom of Information Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety(90) days preceding the receipt by this Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request). If you claim that you cannot pay for the production of these documents, you will be required to provide proof of indigency as set forth herein.

agency shall waive any fee provided for in this section when: (1) the person requesting the records is an indigent individual....”

11. At the hearing, the complainant argued that in the past, when he has signed an “affidavit of indigency” for the court, it has been accepted without any additional evidence of such indigency. Therefore, the complainant contended that if the affidavit was sufficient for the court, then it should have been sufficient for the respondents.

12. However, there is no uniform standard of indigence in Connecticut. In May v. Freedom of Info. Comm'n, No. HHBCV064011456, (Conn. Super. Ct. Apr. 30, 2007) the court agreed with the Commission’s interpretation of “indigent individual” in §1-212(d)(1), G.S., as allowing each agency to set its own standard of indigence, provided the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.

13. It is found that the respondents’ indigency policy is similar to the indigency policy of the Department of Correction (“DOC”) in that such policy looks at the funds available in the inmate’s trust account on the date of the request, and looks back in time on the inmate’s trust account history. The Commission has previously approved the DOC’s standard of indigence. See Docket #FIC 2010-030, Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (September 22, 2010); Docket #FIC 2009-137, Bryant Rollins v. Administrator, State of Connecticut, Department of Correction, Freedom of Information Office; and State of Connecticut, Department of Correction (February 24, 2010); Docket #FIC 2009-483, Bryant K. Rollins v. Executive Director, State of Connecticut, University of Connecticut Health Center, Correctional Managed Health Care; and State of Connecticut, University of Connecticut Health Center, Correctional Managed Care (July 14, 2010); Docket #FIC 2015-644, Andres Sosa v. Scott Semple, Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (June 28, 2016); and Docket #FIC-2018-0295, Noah Snyder v. Scott Semple, Commissioner State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (April 24, 2019).

14. It is found that the respondents’ indigency policy is objective, fair and reasonable and was being applied in a nondiscriminatory manner.

15. At the hearing, the respondents provided as evidence a copy of the complainant’s inmate trust account obtained from the DOC. The records reflect that the complainant had a balance that exceeded \$5.00 on all but a single occasion between the months of February and May 2020.

16. It is found that the “affidavit of indigency” submitted by the complainant was not sufficient to prove the complainant’s indigence in a manner that would satisfy the respondents’ policy. Therefore, it is found that the complainant failed to prove that he was indigent. Accordingly, it is concluded that the respondents did not violate §1-212(a), G.S., as alleged by the complainant, when they withheld the responsive records awaiting payment of fees by the complainant.

17. With regard to the complainant's allegation that the respondents' actions were not prompt, in Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

18. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

19. It is found that at the time of the complainant's request, the respondents had eighteen requests ahead of the complainant's and that such requests required extensive review. Additionally, it is found that the complainant's request consisted of thirty-eight parts and involved a review of voluminous records from a murder investigation. Also, the respondents were plagued with a rash of staff absences as the result of the COVID-19 pandemic. It is found that the respondents' actions regarding the search, review, and preparation of records for the complainant were prompt considering the circumstances described by the respondents. Accordingly, it is concluded that the respondents did not violate the promptness provisions of §1-212(a), G.S., as alleged by the complainant.

20. Having found no violations of the FOI Act by the respondents, it is unnecessary for the Commission to consider the imposition of a civil penalty.

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 June 23, 2021.



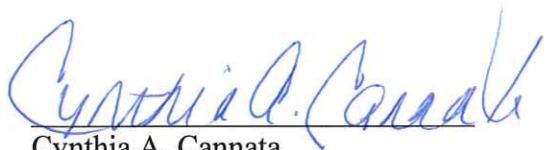
Cynthia A. Cannata
Acting Clerk of the Commission

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:

LUIS COLON ORTEGA, #394585, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

FERNANDO SPAGNOLO, CHIEF, POLICE DEPARTMENT, CITY OF WATERBURY; POLICE DEPARTMENT, CITY OF WATERBURY; AND CITY OF WATERBURY, c/o
Attorney Richard J. Scappini, City of Waterbury, Office of Corporation Counsel, 235 Grand Street, 3rd Floor, Waterbury, CT 06702



Cynthia A. Cannata
Acting Clerk of the Commission