

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Angelo Reyes,

Complainant

against

Docket #FIC 2020-0510

Fire Marshall, City of New Haven; and
City of New Haven,

Respondents

April 27, 2022

The above-captioned matter was heard as a contested case on December 8, 2021, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session). The complainant was incarcerated at a facility of the Department of Correction at the time of the request and at the time of the hearing.

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 July 13, 2020, the complainant requested chain of custody records related to the investigation of a fire that occurred on October 9, 2008, at 95 Downing Street in New Haven, Connecticut (the "fire").
3. By letter of complaint, dated August 16, 2020 and filed October 7, 2020¹, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records, described in paragraph 2, above.
4. At the time of the request, §1-200(5), G.S., provided:

¹ On March 25, 2020, the Governor issued Executive Order 7M (§2(1)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), requiring the filing of an appeal with the Freedom of Information Commission not later than thirty days after any alleged denial. Executive Order 7M (§2(1)) applied to any appeal filed prior to April 19, 2021. The Governor also issued Executive Order 7M (§2(2)), thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M (§2(2)), which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission has jurisdiction over the complaint.

“[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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.²

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

6. 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.”

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

8. At the hearing in this matter, the complainant testified that he did not receive any records responsive to the request described in paragraph 2, above. The complainant argued that such records should exist because an appeal of his criminal conviction for arson is still pending.

9. It is found that the fire was investigated by the New Haven Fire Department, the New Haven Police Department, and the Connecticut State Police Fire and Explosion Investigation Unit all.

10. The respondents’ witness, Justin McCarthy, who is the Assistant Chief of Administration (“ACA”) for the New Haven Fire Department, testified, and it is found, that upon receipt of the request described in paragraph 2, above, he asked the Acting Fire Marshal to search for any and all records related to the investigation of the fire. ACA McCarthy testified, and it is found, that the respondents conducted a thorough search of all locations where records of investigations would be stored and that no responsive records were located.³ ACA McCarthy further testified that, based on his experience and the results of the respondents’ search, any

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

³ It is found that an Incident Report, dated November 13, 2019, was the only record located during the respondents’ search, and although such record was not responsive to the request described in paragraph 2, above, the respondents disclosed the Incident Report to the complainant.

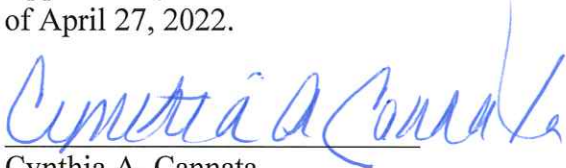
responsive records would likely to be maintained by the New Haven Police Department or the Connecticut State Police.

11. Based upon the foregoing, it is concluded that the respondents did not violate §§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 dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 27, 2022.



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:

ANGELO REYES, #115681, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

FIRE MARSHAL, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN, c/o Attorney Catherine LaMarr, Office of the Corporation Counsel, City Hall, 165 Church Street, 4th Floor, New Haven, CT 06510



Cynthia A. Cannata
Acting Clerk of the Commission