

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Lonnie Owen,

Complainant

against

Docket # FIC 2021-0402

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

Respondents

July 13, 2022

The above-captioned matter was heard as a contested case on February 24, 2022 and April 27, 2022, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session). At the time of the request and hearings in this matter, the complainant was incarcerated in a correctional facility of the state Department of Correction.

By email dated April 27, 2022, the respondents requested permission to submit two after-filed exhibits. Absent objection from the complainant, the hearing officer granted the respondents' request and admitted the following:

Respondents' Exhibit 6 (after-filed): April 22, 2022 Cover Letter to Records to Anthony Campanelli of the Department of Correction (2 pages); and

Respondents' Exhibit 7 (after-filed): April 22, 2022 Notification Letter to Lonnie Owen of Forwarding Records to the Department of Correction (2 pages).

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 dated July 11, 2021, the complainant requested that the respondents provide him with a copy of the entire file pertaining to his arrest for an incident occurring on January 1, 2003 (identified as case number 03D-002 and file number 030109-165).
3. It is found that, by letter dated July 15, 2021, the respondents acknowledged receipt of the complainant's request, and notified the complainant that the request would be forwarded to "the Office of the City Attorney for response."

4. By letter of complaint dated July 18, 2021 and received and filed July 22, 2021, 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. Specifically, the complainant alleged that the respondents did not comply with his request for records. The complainant also requested that the Commission impose a civil penalty against the respondents.

5. 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, videotaped, printed, photostated, photographed or recorded by any other method.

6. 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.

7. 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.”

8. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, having received no responsive records, the complainant, by letter dated October 3, 2021, contacted the Office of the City Attorney inquiring about his pending request. It is further found that, by letter dated October 15, 2021, the Office of the City Attorney advised that it was “in the process of reviewing and processing” the request.

10. It is found that, as of the February 24, 2022 hearing, the respondents had not provided the complainant with any responsive records. At the request of the parties, the hearing was continued to allow them the opportunity to resolve the matter.

11. It is found that, on or about April 22, 2022, the respondents mailed some, but not all, responsive records to the state Department of Correction in accordance with §1-210(c), G.S., which provides that a public agency must notify the Commissioner of Correction when it receives a request from a person confined in a correctional institution or facility. However, it is found that, at the time of the April 27, 2022 continued hearing, the complainant had not received

any records from the respondents.

12. At the April 27, 2022 continued hearing, the respondents declined to present evidence to demonstrate their efforts to meet their obligation under the FOI Act to provide the complainant a copy of all records responsive to his request.

13. Instead, the respondents contended that the Commission lacked subject matter jurisdiction, arguing that there had been no statutory denial, within the meaning of §1-206(a), G.S., when the complainant drafted and filed his appeal to the Commission. In addition, the respondents contended that the appeal was moot and should therefore be dismissed.

14. Section 1-206(a), G.S., provides:

[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 ... 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 (emphasis added).

15. Section 1-206(a), G.S., “provides that a request for information under the [FOI] Act is constructively [or “deemed”] denied if there is no response from the public agency within four business days of the request.” Sedensky v. Freedom of Information Commission, No. HHB-CV-136022849-S, 2013 WL 6698055, at *4 (Conn Super. Ct. Nov. 26, 2013). As our Supreme Court has held, “[a]lthough a written denial of a request for disclosure of public records is required [under 1-206(a)], there is no statutory recourse against a public agency for failure to comply with this requirement. Without the statutory [or “deemed”] denial provision therefore, if a public agency failed to respond to a request, the person seeking disclosure would have no further recourse because the right of appeal to the [Commission] in §1-206(b) is the right to appeal a denial.” West Hartford v. Freedom of Information Commission, 218 Conn. 256, 261-262 (1991).

16. The respondents contended that the complainant dated and mailed his complaint prior to the expiration of the “four business day” period, interpreting §1-206(a), G.S., to mean “four business days” from the date the request is *received* by the public agency. As previously found herein, the respondents received the complainant’s July 11, 2021 request on July 15, 2021. The complaint to the Commission was dated July 18, 2021 and filed with the Commission on July 22, 2021.

17. The Commission notes that the issue of whether §1-206(a), G.S., provides for the right to an appeal from a statutory denial four business days from the date of the request, or four business days from the date the request is received by the public agency, is the subject of a pending appeal at the Appellate Court. See, City of Bridgeport et al. v. Freedom of Info. Comm'n, No. HHB-CV-216064435-S, 2022 WL 375633, at *4 (Jan. 21, 2022), *appeal docketed*, A.C. 45287 (Feb. 7 2022). Until such issue is resolved by the Appellate Court, the Commission maintains that its interpretation of §1-206(a), G.S., as providing the right to appeal from a statutory denial four business days from the date of the request, is correct.

18. As previously found herein, the request was dated Sunday, July 11, 2021. It is found that four business days therefrom was July 16, 2021. It is further found that the respondents had not provided the requested records or denied the request in writing on or before July 16, 2021. Accordingly, it is found that the request was deemed denied, by operation of §1-206(a), G.S., on July 16, 2021. Because the request was statutorily denied at the time of the complaint, the Commission has jurisdiction over the complaint.

19. Next, the respondents contended that this matter was moot and therefore it should be dismissed. According to the respondents, the only violation alleged in the complaint was that the respondents failed to respond to his request within four business days, and that because they acknowledged the request in a letter to the complainant, dated July 15, 2021, and promised to comply with the request, such violation was remedied.

20. However, the complaint clearly alleged that the respondents violated the FOI Act by failing to comply with the request for copies of all responsive records which, at the time of the hearing, remained in contention, and the respondents' promise to provide responsive records did not render the complaint moot. It is found that, as of the April 27, 2022 continued hearing, nine months had elapsed and the respondents still had not provided the complainant with all responsive records. Accordingly, it is concluded that the matter is not moot.

21. Although the respondents conceded that all responsive records had not been provided, they failed to present evidence to demonstrate their efforts to meet their obligation under the FOI Act to provide "promptly upon request, a plain, facsimile, electronic or certified copy of any public record" within the meaning of §1-212(a), G.S. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Docket No. HHB-CV-18-6047741-S, 2020 WL 5540637, at *6 (July 20, 2020), 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."

22. It is found that the respondents failed to prove that they met their obligation under the FOI Act to provide "promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

23. Based upon the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to promptly provide all responsive records to the complainant.

24. With respect to the complainant's request for a civil penalty, the Commission declines at this time to consider the imposition of a civil penalty. However, the Commission has recently expressed its concern about the respondents' delays in providing responsive records. The Commission has cautioned the respondents that failure to put forth evidence to justify such delays in disclosure may result in the imposition of a civil penalty. See, 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). The


respondents are again cautioned that a civil penalty may be warranted in future cases where the Commission finds a violation of §§1-210(a) and 1-212(a), G.S.

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

1. Within seven days (7) days of the date of the Notice of Final Decision, the respondents shall provide the complainant with copies of all records responsive to the request described in paragraph 2 of the findings, above, free of charge.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 13, 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:

LONNIE OWEN, #282985, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

REBECCA GARCIA, CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Cynthia A. Cannata
Acting Clerk of the Commission