

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Marlando Daley,

Complainant

against

Docket # FIC 2020-0270

Armando Perez, Chief, Police Department,
City of Bridgeport; Police Department, City
of Bridgeport; and City of Bridgeport,

Respondents

March 9, 2022

The above-captioned matter was heard as a contested case on April 20, 2021, June 28, 2021, and November 15, 2021, at which times the complainants 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 through the use of electronic equipment (remotely) pursuant to Executive Order 7B¹ and §149 of Public Act 21-2 (June Special Session). At the time of the request and hearings in this matter, the complainant was incarcerated.

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 June 1, 2020, the complainant requested that the respondents provide him with copies of the following records:
 - a. Any and/or all documents in regard to the general police practices.
 - b. Any and/or all documents in regard to the standard police investigative procedures.
 - c. Any and/or all documents in regard to the Bridgeport police manual with standard operating procedures and/or routine practices.
 - d. Any and/or all documents pertaining to the Bridgeport police protocols in regard to crime scene investigation.
 - e. Any and/or all documents in regard to the Bridgeport police protocols canvassing a crime scene.

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

f. Any and/or all documents pertaining to the Bridgeport police policies and directives.

3. By letter of complaint filed June 17, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request described in paragraph 2, above. Additionally, the complainant requested that the Commission consider the imposition of a civil penalty against the respondents.

4. At the time of the request, § 1-200(5), G.S., provided:

“[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.³

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 records described in paragraph 2, above, to the extent such records are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that, by letter dated July 13, 2020, the respondents acknowledged the complainant’s request and indicated that the respondents were in the process of retrieving and

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 through June 30, 2021. Consequently, the Commission retains jurisdiction.

³ Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data of information that is “videotaped.” Such amendment was effective June 23, 2021.

reviewing responsive records.

9. It is found that, as of the date of the first hearing in this matter (April 20, 2021), more than 10 months after the initial request, the respondents had not disclosed any responsive records to the complainant. At such hearing, the complainant narrowed his request to only policies regarding the police investigative process, crime scene processing and witnesses interview procedures. Additionally, the parties agreed that the respondents would correspond with the complainant's attorney and provide such attorney with the responsive records.

10. It is found that, two months later, on June 23, 2021, the respondents communicated with the complainant's attorney and provided instructions to the attorney with regard to accessing the policies sought by the complainant using the respondents' website where current policies had recently been uploaded.

11. At the continued hearing in this matter held on June 28, 2021, the complainant again clarified his request, stating that he was only seeking policies that were in effect at the time of his arrest in 2011. In light of the further clarification, the respondents requested additional time to conduct a search for the older records identified by the complainant.

12. It is found that by email dated July 21, 2021, the respondents forwarded to the complainant's attorney a copy of policy #1.3.35 - Processing Property and Evidence. It is found that of the policies sought by the complainant as described in paragraphs 9 and 11, above, such policy was the only one that existed in 2011.

13. It is found that, as of the continued hearing held on November 15, 2021, the complainant had not received any records from his attorney.

14. Although, the Commission cannot compel the complainant's attorney to provide the records to the complainant, the Commission is concerned with the thirteen month delay between the date of the request and the date the responsive record was provided to the complainant's attorney.

15. 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." [Emphasis added]

16. 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. As the court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. HHB-CV-18-6047741 (July 20, 2020) *6, 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."

17. 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.

18. It is found that the respondents failed to provide any evidence as to the factors set forth in paragraph 17, above, that would explain the delay in disclosing the responsive record to the complainant's attorney.

19. Based on the foregoing, it is found that the respondents failed to promptly disclose the responsive record to the complainant. It is further found that the respondents' conduct in responding to the request at issue demonstrates that they did not consider responding to such request to be a "primary duty" of the agency.

20. It is therefore concluded that the respondents violated the promptness requirements in §§1-210(a) and 1-212(a), G.S.

21. The Commission declines to consider the imposition of a civil penalty against the respondents in this particular matter. However, the respondents are cautioned that a civil penalty may be appropriate for consideration in future cases in which the Commission finds a violation of the promptness requirements.

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

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

Approved by Order of the Freedom of Information Commission at its regular meeting of March 9, 2022.



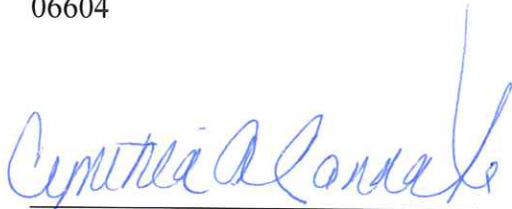
Cynthia A. Cannata
Acting Clerk of the Commission

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:

MARLANDO DALEY, #383160, Corrigan/Radgowski Correctional Center, 986 Norwich-New London Turnpike, Uncasville, CT 06382

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



Cynthia A. Cannata
Acting Clerk of the Commission