

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jacob Carattini,

Complainant

against

Docket # FIC 2019-0636

Joseph Gaudett, Chief, Police Department,
City of Bridgeport; and Police Department,
City of Bridgeport,

Respondents

March 23, 2022

The above-captioned matter was heard as a contested case on February 22, 2021, July 16, 2021 and September 10, 2021, 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 hearing was conducted telephonically.¹ This matter was consolidated for hearing with Docket #FIC 2020-0141; Jacob Carattini v. Armando Perez, Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport. At the time of the request and the hearing, the complainant was incarcerated in a correctional facility of the State Department of Correction.

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 September 16, 2019, the complainant requested that the respondents provide copies of the following records pertaining to Case Number 08D-1462:
 - (a) All phone records including phone tower records;
 - (b) All written statements and/or typewritten statements; and

¹ The February 21, 2021 hearing convened telephonically pursuant to Executive Order 7B, which suspended the requirement to conduct public meetings in person. The July 16, 2021 and September 10, 2021 hearings were conducted telephonically pursuant to 149 of Public Act 21-2 (June Special Session).

(c) All records utilized to obtain a warrant, including any affidavits.

3. It is found that by letter dated October 7, 2019, the respondents acknowledged receipt of the September 16, 2019 request.

4. By letter of complaint filed October 21, 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 records responsive to the request described in paragraph 2, above. The complainant also requested the Commission impose a civil penalty against the respondents.

5. 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

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), 1-210(a) and 1-212(a), G.S.

9. It is found that the respondents conducted a search for records, and that by letter dated December 18, 2019, responsive records were provided to the Department of Correction in accordance with §1-210(c), G.S., which provides that a public agency must notify the

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §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, through June 30, 2021. Consequently, the Commission retains jurisdiction.

³ Section 1-200(5), G.S., was subsequently amended to include the term “videotaped.” See Public Act 21-2, §147 (June Special Session).

Commissioner of Correction when it receives a request from a person confined in a correctional facility. It is further found that such records were provided to the complainant.

10. However, it is found that, following review of such records, the complainant notified the respondents that he believed that the respondents maintained additional records responsive to his request.

11. It is found that the respondents conducted an additional search, and on or about March 2020 additional responsive records were located. It is further found that such records were provided to the Office of the City Attorney of the City of Bridgeport for its review.

12. A first contested case hearing convened on February 22, 2021, and the complainant contended that all responsive records had not been provided to him. It is found that the respondents had not provided the complainant with any of the additional records which were located and turned over to counsel in March 2020. Counsel attributed the delay to office closures and a lack of in-office staffing due to the COVID-19 pandemic and specifically that, as of the February 22, 2021 hearing date, the staff in the Office of the City Attorney primarily worked remotely. The Commission takes administrative notice of the fact that around mid-March 2020, due to the COVID-19 pandemic, city and local government buildings, as well as businesses considered non-essential, were closed by executive order of the Governor.

13. At the request of the parties, the matter was continued to allow the respondents, by their counsel, additional time to review and provide responsive records.

14. A continued hearing was held on July 16, 2021. It is found that between the February 22, 2021 and July 16, 2021 hearing dates, the respondents mailed a package of responsive records to the complainant's attorney. However, the complainant had not received such records from his attorney, and neither the respondents nor the complainant knew whether the records were actually received by the complainant's attorney. At the request of the parties, the matter was continued to allow the parties an opportunity to locate the responsive records mailed to the complainant's attorney, to allow for their review by the complainant, and further to allow the respondents, by their counsel, time to review and disclose additional responsive records.

15. A continued hearing was held on September 10, 2021. It is found that between the July 16, 2021 and September 10, 2021 hearing dates, the complainant received the additional package of records identified in paragraph 14, above. At the hearing, the complainant contended that the only remaining issue was whether all records responsive to the request set forth in paragraph 2(a), above, had been provided. The complainant also expressed his frustration that all responsive records had yet to be provided given the length of time that transpired since the date of his request.

16. The respondents did not dispute the complainant's contention that all records responsive to paragraph 2(a) had not been provided, as the Office of the City Attorney continued to review the records it was provided in March of 2020. The respondents also contended that their counsel's ability to review and provide responsive records continued to be impacted by the COVID-19 pandemic. However, it is found that over the span of the three hearings, the

respondents offered no evidence of the efforts of the Office of the City Attorney to review and provide all responsive records to the complainant in the 18 months following March 2020, when the respondents provided responsive records to their counsel for review.

17. The plain language of §1-212(a), G.S., requires a public agency to provide “promptly upon request, a plain, facsimile, electronic or certified copy of any public record.” 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, 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.”

18. The Commission is concerned about the two-year delay between the date of the September 16, 2019 request and the September 10, 2021 hearing, at which time counsel for the respondents confirmed all responsive records had yet to be provided because such records remained under review by the Office of the City Attorney.

19. 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.” The respondents do not avoid their obligation under the FOI Act to provide public records “promptly upon request” simply by forwarding responsive records to counsel.

20. 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.

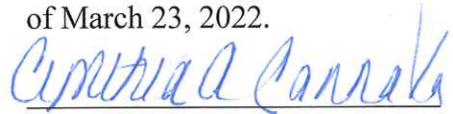
21. With respect to the complainant’s request for a civil penalty, the Commission declines at this time to consider the imposition of a civil penalty. However, the Commission is concerned by the two-year delay referred to in paragraph 18, above. The respondents are cautioned that similar delays in future cases may result in the imposition of a civil penalty where the respondents fail to put forth evidence that such delays are justified.

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 the records described in paragraph 2(a), above, which have not already been provided to the complainant, 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 March 23, 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:

JACOB CARATTINI, #175857, MacDougall-Walker CI, 1153 East Street South, Suffield, CT 06080

JOSEPH GAUDETT, CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND POLICE DEPARTMENT, 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