

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Elizardo Montanez,

Complainant

against

Docket # FIC 2020-0509

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

Respondents

October 26, 2022

The above-captioned matter was heard as a contested case on March 17, 2022, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session). At the time of hearing in this matter, the complainant was incarcerated in a correctional facility of the Department of Correction. For purposes of the hearing, the above-captioned matter was consolidated with Docket #FIC 2020-0518; Elizardo Montanez v. Chief, Police Department, City of Bridgeport; Police Department, City of Bridgeport; and City of Bridgeport.

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 November 7, 2019, and addressed to the respondent Police Department, the complainant requested from the respondents copies of records pertaining to Case No. 14D-0328. ("November 7th request").
3. It is found that by letter dated November 12, 2019, the respondents' Office of the City Attorney ("City Attorney") acknowledged the November 7th request, and assigned such request reference number W002310-111219 for tracking purposes.
4. It is found that by letter dated December 9, 2019, the City Attorney informed the complainant that records responsive to the November 7th request were being reviewed. It is also found that, by letter dated July 13, 2020, the City Attorney informed the complainant that the

respondents estimated that records responsive to such request would be mailed to his preferred mailing address within two to three weeks.

5. It is found that by undated letter, received by the City Attorney on July 27, 2020, the complainant made a request to the respondents for copies of “all of [Johnathan Bagon’s] arrest records”, and “all of the bail commissioner notes if any on Valerie C. Gomez-Delavega [who] was arrested on robbery charges.”

6. It is found that by letter dated July 22, 2020, and received by the City Attorney on July 30, 2020, the complainant requested that the respondents provide him with copies of: “a sworn recorded interview with Valerie C. Gomez-Delavega...taken by Detective C. Borona” and “all of his or her notes”; and “bail commissioner notes and case file (14D-0592).”

7. It is found that by letter dated July 31, 2020, the City Attorney acknowledged the two requests, described in paragraphs 5 and 6, above (collectively “the July 2020 requests”), and assigned such requests reference number W003035-073120 for tracking purposes.

8. By letter received October 7, 2020,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the records described in paragraphs 2, 5 and 6, above.²

9. At the time of the requests, §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

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.

² At the hearing, the complainant also claimed, for the first time, that the respondents failed to provide him with copies of records responsive to a January 21, 2020 request. However, it is found that such allegation was not fairly raised in the complaint, and it is concluded, therefore, that the Commission lacks jurisdiction to address such allegation.

³ 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”.

10. 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.

11. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

13. At the hearing, respondents’ counsel represented that, as of March 17, 2022, records responsive to the November 7th request were in the process of being reviewed. Respondents’ counsel provided no details as to what efforts the respondents had made or were making to search for records responsive to the July 2020 requests.

14. At the close of the hearing, the hearing officer ordered the respondents to submit an affidavit regarding the status of the November 7th and July 2020 requests. On April 8, 2022, the respondents submitted an affidavit attesting that, as of that date:

[a] records pertaining to Case No. 14D-0328 have been located and are being reviewed, including identification of records responsive to the [November 7th] request, and redaction of exempt material pursuant to the [FOI] Act.... It is anticipated that review will be completed by the end of April, 2022...[and]...

[b] records responsive to [the July 2020] request[s]...have not been located, or do not exist pursuant to relevant Connecticut law....⁴

15. Subsequently, on September 2, 2022, pursuant to a separate order of the hearing officer, the respondents submitted an affidavit attesting that, as of that date, the status of the July 2020 requests had not changed, and that the review and redaction of records responsive to the November 7th request would be completed, and redacted records provided to the complainant at his facility, free of charge, by September 16, 2022.⁵

⁴ The affidavit, dated April 8, 2022, has been marked, without objection, as respondents’ Exhibit 12 (after-filed).

⁵ The affidavit, dated September 2, 2022, has been marked, without objection, as respondents’ Exhibit 13 (after-filed).

16. With respect to the November 7th request, which was made over two years prior to the date of the hearing in this matter, it is found that the respondents failed to provide the complainant with any records responsive to such request.

17. With respect to the July 2020 requests, which were made over a year and half prior to the date of the hearing in this matter, it is found that the respondents failed to prove that they conducted a thorough search for responsive records. It is therefore found that they failed to prove that they provided a copy of all responsive records to the complainant, or that they do not maintain responsive records.

18. At the hearing, the respondents also contended that their response to the complainant's requests was prompt.

19. 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."

20. 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.

21. It is found that the respondents failed to make witnesses available at the hearing who could explain the delay in their response. However, in the September 2, 2022 affidavit, the respondents attested that:

[t]he City of Bridgeport has experienced significant growth in the number of FOI requests received in recent years. According to Office of the City Attorney records, 544 requests were received in 2017. As of [September 2, 2022], 1,240 FOI requests have been received...in 2022.

In addition, specifically with respect to the November 7th request, the respondents attested that:

[a]lthough the initial expectation was that review would be completed by the end of April, 2022, in light of the [respondents'

counsel's] other obligations, including, but not limited to, complying with other voluminous, time-sensitive orders for production issued by the [FOI] Commission in unrelated matters, review has not yet been completed.⁶

22. Notwithstanding the increase in the volume of records requests and counsel's other obligations, it is found that the respondents failed to promptly disclose responsive records to the complainant. It is further found that the respondents' conduct in responding to the requests at issue demonstrates that they did not consider responding to such requests to be a primary duty of the agency.

23. It is therefore concluded that the respondents violated §§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 14 days of the Notice of Final Decision, the respondents shall provide a copy of all records responsive to the November 7, 2019 request, described in paragraph 2 of the findings, above, to the complainant, free of charge.

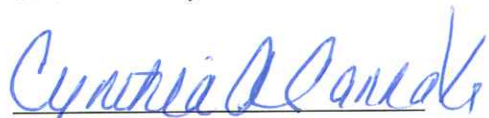
2. Within 14 days of the Notice of Final Decision, the respondents shall conduct a search for records responsive to the July 2020 requests, described in paragraphs 5 and 6 of the findings, above, and provide copies of such records to the complainant, free of charge. If the respondents do not locate the requested records, they shall, within 14 days of the Notice of Final Decision, provide the complainant with an affidavit detailing the results of their search including the job titles of the individual(s) who conducted the search.

3. If the respondents claim exemptions for any records responsive to the requests described in paragraphs 2, 5 and 6 of the findings, above, they shall, within 14 days of the Notice of Final Decision, provide a privilege log to the complainant identifying each of the records claimed to be exempt, if any, and the legal basis for each claimed exemption.

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

⁶ At the hearing, the respondents requested that the Commission take administrative notice of the evidence taken in an unrelated matter, Docket #FIC 2020-0659, Bobby Simmons v. Office of the City Attorney, City of Bridgeport; and City of Bridgeport. Pursuant to §1-21j-37(e) of the Regulations of Connecticut State Agencies, "[a]ny testimony or exhibit admitted in evidence in another commission case may be offered as evidence in a subsequent hearing and admitted as an exhibit therein." Docket #FIC 2020-0659 concerns a different complainant and records and is still pending before the Commission. The request to take administrative notice is hereby denied.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 26, 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:

ELIZARDO MONTANEZ, #371236, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

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