

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jan Gawlik,

Complainant

against

Docket # FIC 2020-0597

Christopher W. Chute, Chief, Police
Department, City of New Britain; Police
Department, City of New Britain; and City
of New Britain,

Respondents

February 8, 2023

The above-captioned matter was heard as a contested case on April 4, 2022, May 2, 2022, and June 9, 2022, at which times 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 hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session), as amended by §1 of Public Act 22-3. At the time of the request and the hearing, the complainant was incarcerated at a facility of the Connecticut Department of Correction ("DOC").

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 October 19, 2020, the complainant requested from the respondents a copy of all records relating to case number 11-35751, in which the complainant was the defendant.
3. It is found that, by letter dated October 28, 2020, the respondents informed the complainant that they had located 151 pages of records responsive to his request and that the cost for copies would be \$.50 per page, for a total of \$75.50. However, the respondents also informed the complainant that they intended to seek a determination from the DOC as to whether the complainant was indigent, prior to disclosing the records. It is found that, on October 28, 2020, the DOC informed the respondents that, under the DOC's standard of indigency, the complainant was not indigent.

4. It is found that, on or about November 3, 2020, the complainant requested a waiver of fees from the respondents. By letter dated November 10, 2020, the respondents denied the complainant's fee waiver request on the ground that the complainant was not indigent according to the United States Federal Poverty Level Chart for the calendar year 2020 ("federal poverty level").

5. By letter of complaint filed November 20, 2020,¹ the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records, as described in paragraph 2, above.

6. Section 1-200(5), G.S., provides, as follows:

"[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.²

7. 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.

8. 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."

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

¹On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, 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 retains subject matter jurisdiction.

²Section 147 of Public Act 21-2 (June Special Session) subsequently amended the definition of "[p]ublic records or files" to also include data or information that is "videotaped." That amendment was effective on June 23, 2021.

10. At the hearing, the complainant contended that the respondents' search for the requested records was not thorough and that the respondents should maintain more than 151 pages of responsive records.

11. The detective assigned to the New Britain police department records division, testified, and it is found, that she searched the case file for paper records and the department's computer server for electronic records. The detective also testified that, to the extent that the respondents maintained photographs, audio footage or video footage responsive to the complainant's request, they would have been in the computer server, and they were not. She further testified, and it is found, that the state police ultimately took over the investigation of case number 11-35751, and therefore, the state police likely maintained additional records related to that case.

12. It is found that the respondents conducted a thorough and diligent search for the requested records, as described in paragraph 2, above, and that all responsive records they maintain were located.

13. At the hearing, the complainant further contended that he was indigent at the time of his request, and therefore, the respondents were required to waive the copying fee. The respondents clarified at the hearing that their indigency policy is based on the federal poverty level and reiterated that the complainant was not indigent under that standard.³

14. Section 1-212(a)(B), G.S., provides that public agencies other than state agencies may charge up to \$.50 per page for copies of public records. However, §1-212(d)(1), G.S., requires that a public agency waive such fee for requesters who are "indigent."

15. There is no uniform standard of indigence in Connecticut. However, in May v. Freedom of Information Commission, Docket No. CV-06-4011456, 2007 WL 1417112 (Apr. 30, 2007), the court agreed with the Commission's determination that each agency be permitted to set its own standard of indigence, provided that such standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.

16. The Commission previously concluded that the federal poverty level guidelines are objective, fair and reasonable for determining whether a person is indigent. See Kulick v. West Hartford; Docket #FIC 1991-356 (October 14, 1992) (approving agency's use of federal poverty guidelines as guidance in determining indigency).

17. It is found that the federal poverty level in 2020 was \$12,760 per year and that the complainant's social security disability income in 2020 was \$16,584 per year. The complainant offered no evidence that the respondents applied their indigency policy in a discriminatory manner.

18. It is therefore found that the complainant was not "indigent" at the time of the request and that the respondents were not required to waive the statutory copying fee.

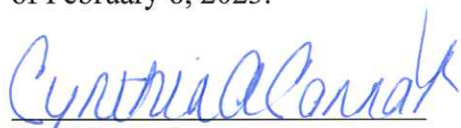
³The respondents offered no explanation as to why, initially, they contacted the DOC about the complainant's indigency status under the DOC's standard.

19. Accordingly, it is concluded that the respondents did not violate §1-212(a), G.S., as alleged by the complainant, by withholding copies of responsive records until the complainant paid the applicable copying fee.

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 8, 2023.



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:

JAN GAWLIK, #138888, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

CHRISTOPHER W. CHUTE, CHIEF, POLICE DEPARTMENT, CITY OF NEW BRITAIN; POLICE DEPARTMENT, CITY OF NEW BRITAIN; AND CITY OF NEW BRITAIN c/o Attorney John F. Diakun, City of New Britain, Office of Corporation Counsel, 27 West Main Street, New Britain, CT 06051



Cynthia A. Cannata
Acting Clerk of the Commission