

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Salvatore Coppola,

Complainant

against

Docket #FIC 2020-0421

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

Respondents

January 25, 2023

The above-captioned matter was heard as a contested case on November 7, 2022, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint. The respondents failed to appear.

The hearing officer notes that the Order to Show Cause was delivered to the respondents' mailing address by certified U.S. mail on October 11, 2022.

At the hearing officer's request, the complainant, following the hearing, filed with the Commission an after-filed exhibit, which has been marked as Complainant's Exhibit B (after-filed): Letter from Gerald Narowski, Chief of the Derby Police Department, to the Complainant dated August 11, 2020.

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 August 5, 2020, the complainant requested from the respondents "a copy of the investigative report done by the Derby Police Department regarding an incident that [the complainant] reported to the Derby Police on or about November 7, 2019 regarding the Derby Town Clerk's office."
3. It is found that, by letter dated August 11, 2020, the respondents acknowledged the request, described in paragraph 2, above.

4. By letter dated September 1, 2020, and filed September 4, 2020,¹ the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the requested record.

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.²

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. At the hearing in this matter, the complainant testified to the following:

In November 2019, while serving as the Finance Director for the City of Derby, he went to the Derby Town Clerk’s office to use one of its computers for his work-related duties. While there, the complainant overheard two Assistant Town Clerks for the City of Derby discussing a marriage license, which the Derby Town Clerk had issued. The clerks indicated that the town clerk had issued a marriage license to individuals whom the clerk had joined in marriage, which was prohibited by state statute. Thereafter, he contacted the respondent police department and spoke with a police officer regarding the issue. Later, one of the assistant clerks informed him that an officer had also questioned the assistant

¹ 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 over this matter.

² Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “public records or files” to also include data or information that is “videotaped”.

clerk regarding the complainant's report. Therefore, he believes that the respondents conducted an investigation in response to his complaint.

9. In the absence of the respondents, and any testimony or evidence proffered by them, the complainant's testimony concerning the events described in paragraph 8, above, is credited as fact.

10. It is found that the complainant seeks the investigation report, to the extent that it exists, regarding the incident described in paragraph 8, above.

11. It is concluded that the records requested by the complainant, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

12. It is found that, other than their acknowledgement letter dated August 11, 2020 described in paragraph 3, above, the respondents never followed up or communicated with the complainant, in any manner. It is further found that the respondents failed to provide the complainant with any records responsive to his request described in paragraph 2, above.

13. It is therefore concluded that the respondents violated §§1-200(5), 1-210(a) and 1-212(a), G.S., by failing to provide the complainant with responsive records, to the extent such records exist.

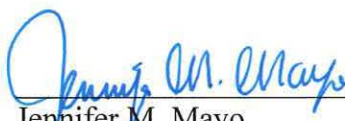
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall forthwith conduct a search of all files within their custody and control for those records responsive to the complainant's August 5, 2020 request referenced in paragraph 2 of the findings, above, and provide the complainant with any responsive records, free of charge. If no such records exist, the respondents shall execute, or cause to be executed, an affidavit detailing the particulars of the search, including who conducted the search and what steps were taken, and stating that no such responsive records exist.

2. The respondents shall provide the complainant with all responsive records or the affidavit as directed in paragraph 1 of this order, no later than seven days after the date of the mailing of Notice of Final Decision in this case.

3. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-200(5), 1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 25, 2023.

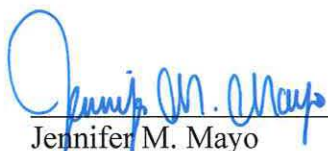

Jennifer M. Mayo
Acting Clerk of the Commission

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:

SALVATORE COPPOLA, 352 Hitching Post Drive, Orange, CT 06477

CHIEF, POLICE DEPARTMENT, CITY OF DERBY; POLICE DEPARTMENT, CITY OF DERBY; AND CITY OF DERBY, c/o Attorney Barbara M. Schellenberg, Marino, Zabel & Schellenberg, PLLC, 657 Orange Center Road, Orange, CT 06477



Jennifer M. Mayo
Acting Clerk of the Commission