

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Latuan Gainey,

Complainant

against

Docket # FIC 2020-0656

Kenneth Keroack, Sergeant, Police
Department, City of Waterbury; Police
Department, City of Waterbury; and City of
Waterbury,

Respondents

January 25, 2023

The above-captioned matter was heard as a contested case on August 5, 2022, at which time 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 hearing was 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 April 17, 2020, the complainant requested from the respondents copies of records relating to "an internal affairs investigation due to an assault against [him] by numerous police officers, requesting all police statements, [his] witness statement on [his] behalf, [his] statements[,] and any and all documents gathered pertaining to this matter as well as Officer Garret Pagel[']s workforce history such as any other excessive force claims or action taken due to his misconduct."
3. It is found that, by letter dated April 20, 2020, the respondents acknowledged receipt of the complainant's request.
4. It is found that, on December 22, 2020, the respondents mailed 43 pages of responsive records to the Freedom of Information ("FOI") administrator of the DOC for review, in accordance with §1-210(c), G.S.¹

¹The process for providing records to an inmate is governed by §1-210(c), G.S., and the policy implementing that statute (policy available on the Commission's website). Section 1-210(c), G.S., provides that "[w]henver a public

5. By letter of complaint filed December 23, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the FOI Act by denying his request for records, described in paragraph 2, above.

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

“[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

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.

agency receives a request from any person confined in a correctional institution . . . for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner . . . of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution”

Pursuant to the policy implementing §1-210(c), G.S., records requested by an inmate should be delivered to the Department of Correction’s FOI Administrator for review to determine whether such records or portions thereof are exempt from disclosure pursuant to §1-210(b)(18), G.S. Records, or portions thereof, deemed to be exempt from disclosure may be withheld by the Administrator. Records deemed to be non-exempt should be delivered promptly to the inmate. If the Administrator withholds any records, the Administrator must promptly notify the inmate in writing and provide the reason for such withholding. An inmate who believes that any records have been improperly withheld by the Administrator may appeal to the Commission.

²On 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.

³Section 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.

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.

10. At the hearing, the complainant contended that the respondents’ search for the requested records was not thorough and that there could be additional responsive records.

11. The sergeant in charge of the records division of the respondent police department testified, and it is found, that he searched such division’s hardcopy and electronic files for records responsive to the complainant’s request. The sergeant further testified, and it is found, that he also expanded his search to the patrol division, the internal affairs division, and the office of the chief of police to ensure that he located all responsive records. With respect to the patrol division, it is found that the sergeant searched its electronic records and requested that such division search its hardcopy records. With respect to the internal affairs division and the office of the chief of police, the sergeant requested that they search their electronic and hardcopy records for responsive records.

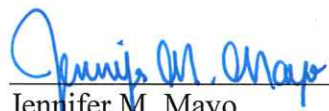
12. It is found that the respondents conducted a thorough and diligent search for the requested records, described in paragraph 2, above, and that they provided to the DOC all responsive records they maintain, pursuant to §1-210(c), G.S.

13. Accordingly, it is concluded that the respondents did not violate §§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. The complaint is dismissed.

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



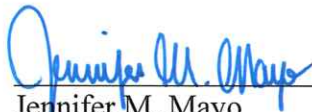
Jennifer M. Mayo
Acting Clerk of the Commission

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:

LATUAN GAINNEY, #350928, Cheshire CI, 900 Highland Avenue, Cheshire, CT 06410

KENNETH KEROACK, SERGEANT, POLICE DEPARTMENT, CITY OF WATERBURY; POLICE DEPARTMENT, CITY OF WATERBURY; AND CITY OF WATERBURY, c/o Attorney Kevin J. Daly, Office of Corporation Counsel, 235 Grand Street, 3rd Floor, Waterbury, CT 06702



Jennifer M. Mayo
Acting Clerk of the Commission