

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Cornel Myers,

Complainant

against

Docket # FIC 2023-0176

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

Respondents

April 10, 2024

The above-captioned matter was heard as a contested case on December 14, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 March 10, 2023, the complainant requested that the respondents provide him with copies of the following records:

- [a.] All police reports in the arrest of Cornel Myers[;]
- [b.] All police officer notes into the investigation of Cornel Myers[;]
- [c.] All interview witness statement[s]/report[s] re: Cornel Myers[;]
- [d.] Any and all reports of alleged crime allegedly committed on Sept. 7<sup>th</sup> 2018 by Cornel Myers[;]
- [e.] Entire police investigation file into the September 7, 2018 into the investigation of Cornel Myers[;]
- [f.] ... [A]ny and all DNA testing of evidence that was sent for DNA testing on any and all evidence recover[ed] at the crime scene and test results[;]
- [g.] ... [T]he 911 call made by Cornel Myers on September 7<sup>th</sup> 2018[; and]

[h.] Names of all police officers[s], detectives' names, emergency person[nel] names that respond[ed] to the call on September 7<sup>th</sup> 2018 involving Cornel Myers.

3. It is found that, by affidavit dated March 10, 2023, the complainant requested from the respondents a waiver of the cost of copying the requested records on the basis of indigency.

4. It is found that, by letter dated March 22, 2023, the respondents denied the complainant's March 10, 2023 records request, described in paragraph 2, above, on the basis that the complainant's habeas corpus petition was pending in court.

5. By letter of complaint filed April 17, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records, 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, videotaped, printed, photostated, photographed or recorded by any other method.

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

10. It is found that the respondents subsequently reversed their initial denial of the complainant's records request, after determining that a pending appeal was not a proper basis to withhold records under the FOI Act. It is further found that, by letter dated June 12, 2023, the respondents informed the complainant that the affidavit, described in paragraph 3, above, was

insufficient for the respondents' purposes and that they required the complainant to complete a Middletown Affidavit of Indigence form, which they enclosed with the June 12, 2023 letter. It is also found that the same letter set forth the respondents' relevant requirements for proof of indigency.

11. It is found that, by letter dated July 1, 2023, the complainant requested that the respondents provide him with an estimate of the cost for copies and indicated that he would have his attorney pay such cost.

12. It is found that, by letter dated July 28, 2023, the respondents informed the complainant that they were unable to contact the complainant's attorney and therefore provided the estimate of cost directly to the complainant. It is found that the respondents, by the same letter, informed the complainant that the estimate for the cost of copies totaled \$438.85.

13. It is found that, by letter dated November 3, 2023, the respondents followed up with the complainant regarding the copying fees and enclosed a copy of their July 28, 2023 letter, referenced in paragraph 12, above.

14. It is found that as of the date of the hearing in this matter, the complainant had neither provided proof of indigency pursuant to the respondents' indigency policy, as set forth in paragraph 18, below, nor paid the required copying fees and therefore the respondents had not disclosed the requested records to the complainant.

15. At the hearing, the complainant contended that the respondents' policy "did not make sense" because he could not afford to pay the fees, yet he was unable to meet the respondents' definition of indigency.

16. With regard to fees to be paid to municipal agencies for any copy provided in accordance with the FOI Act, §1-212(a)(B), G.S., provides that such fee shall not exceed fifty cents per page. Additionally, §1-212(d), G.S., provides that "[t]he public agency shall waive any fee provided for in this section when: (1) the person requesting the records is an indigent individual...."

17. The FOI Act does not define the term "indigent individual." In May v. Freedom of Info. Comm'n, No. HHBCV064011456, 2007 WL 1417112, at \*4 (Conn. Super. Ct. Apr. 30, 2007), the court agreed with the Commission's interpretation of "indigent individual" in §1-212(d)(1), G.S., as allowing each agency to set its own standard of indigence, provided the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.

18. It is found that the respondents' indigency policy provides in relevant part, that:

If the requestor can establish their indigency status, as defined below, the cost associated with the Freedom of Information request shall be waived by the Middletown Police Department. ... An inmate shall be considered indigent if the monetary balance in his/her inmate trust account, or any other known account, has not equaled or exceeded five (\$5.00) dollars at any time (1) during the

ninety days preceding the receipt by this department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

19. It is found that the respondents' indigency policy is similar to the indigency policy of the State of Connecticut, Department of Correction ("DOC") in that such policy looks at the funds available in the inmate's trust account on the date of the request, and looks back in time on the inmate's trust account history.<sup>1</sup> The Commission has previously approved the DOC's standard of indigence. See Ahmaad Lane v. Angel Quiros, Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2021-0287 (April 26, 2023); Noah Snyder v. Scott Semple, Commissioner State of Connecticut, Department of Correction, et al., Docket #FIC 2018-0295 (April 24, 2019); Andres Sosa v. Scott Semple, Commissioner, State of Connecticut, Department of Correction, et al., Docket #FIC 2015-644 (June 28, 2016); and Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction, et al., Docket #FIC 2010-030 (September 22, 2010).

20. It is found that the respondents' indigency policy is objective, fair and reasonable and was being applied in a nondiscriminatory manner.

21. At the hearing, the complainant testified, and it is found, that he earned fourteen dollars every two weeks through his inmate work assignment and therefore the balance in his trust account would never be less than five dollars for any given ninety-day period.

22. Therefore, it is found that the complainant failed to prove that he was indigent for purposes of §1-212(d)(1), G.S.

23. Accordingly, it is concluded that the respondents did not violate §§1-210(a), 1-212(a), and 1-212(d)(1), G.S., by withholding the requested records from the complainant, unless he paid the appropriate fee.

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

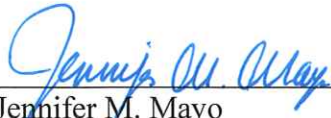
1. The complaint is hereby dismissed.

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<sup>1</sup> The DOC's policy, which the Commission has previously approved, provides, in relevant part:

[a]n inmate shall be considered 'indigent' if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time during the ninety (90) days preceding the receipt by the Department of the request for records and during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request)....

Approved by Order of the Freedom of Information Commission at its regular meeting of April 10, 2024.



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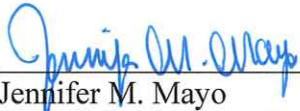
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**CORNEL MYERS, #411921**, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

**CHIEF, POLICE DEPARTMENT, CITY OF MIDDLETOWN; POLICE DEPARTMENT, CITY OF MIDDLETOWN; AND CITY OF MIDDLETOWN**, c/o Attorney Kori Wisneski, City of Middletown, 245 deKoven Drive, Middletown, CT 06457



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Jennifer M. Mayo  
Acting Clerk of the Commission