

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Darius Armadore,

Complainant

against

Docket # FIC 2023-0511

Brian Wright, Chief, Police Department,  
City of New London; Police Department,  
City of New London; and City of New  
London,

Respondents

September 25, 2024

The above-captioned matter was heard as a contested case on May 1, 2024, 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 August 9, 2023, the complainant requested that the respondents provide him with copies of the following records:

Ernie's case # 06-005136

Willetts case #06-4880

NLCC #11-003

...

personal [sic.] file of Det Richard Curcurro.

3. It is found that, by letter dated August 18, 2023, the respondents acknowledged the complainant's August 9, 2023 request and also indicated that, "[u]pon identification of all materials responsive to your request, you will be sent a notification of any associated production costs."

4. It is found that, by letter dated September 24, 2023, the complainant again requested that the respondents provide him with copies of the following records:

Any and all reports pertaining to the Willetts street investigation New London Homicide ... as well as the cold case investigation and the lead investigator's personnel file. ... [including] everything from the Ernie's case 06-5136 and the Willetts case 06-4880, Detective Curcuro's personnel file, and any and all Items pertaining to case number NLCC 11-003, that is any and all DNA reports, worksheets, and chain of custody reports.<sup>1</sup>

5. By letter of complaint filed October 10, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the records described in paragraphs 2 and 4, above. The complainant also requested that this Commission impose civil penalties against the respondents.

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 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, by letter dated January 19, 2024, the respondents informed the complainant as follows:

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<sup>1</sup> Based upon a review of the requests described in paragraphs 2 and 4, above, as well as the Administrative Record in this case, it is found that both the August 18, 2023 request and the August 9, 2023 request seek the same records.

Materials responsive to your August 9, 2023, and September 24, 2023, Freedom of Information requests have been identified, and those materials considered to be releasable will be provided upon receipt of payment of production costs associated with the processing of your request.

The materials identified as releasable consist of the lead investigator, Detective Curcuro's, personnel file. The production costs total \$138.50 (277 pages @\$0.50 per page) and ... made by check or money order, made payable to the City of New London.

Your requests are being processed as quickly as possible. Due to the volume of the documents requested, as materials responsive to your requests are identified, you will be sent a notification of any associated production costs.

Upon receipt of payment, all responsive materials shall be released to the Connecticut Department of Correction... [("DOC")] FOI Administrator for review. Direct release of any materials to you will be made by that office.<sup>2</sup>

Please note that I have not been able to locate any items with a case number of NLCC 11-003. Please advise as to what this case might be.

11. It is found that, prior to the hearing in this matter, the complainant did not respond to the respondents' January 19, 2024 letter in writing or otherwise.

12. At the hearing on this matter, the complainant contended that the respondents should have known that case number "NLCC 11-003" constitutes a New London cold case file associated with a homicide investigation. He also contended that the respondents should provide

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<sup>2</sup> Section 1-210(c), G.S., provides:

[w]henver a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Hospital facility, 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 Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Hospital facility 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 or facility or Whiting Forensic Hospital facility.

him such file as well as the other records he requested and that he could not afford to pay the statutory fees. He further contended that the respondents were not prompt in their response to his records requests described in paragraphs 2 and 4, above.

### **Statutory Fees**

13. With regard to fees to be paid to municipal agencies for any copies provided in accordance with the FOI Act, §1-212(a)(B), G.S., provides that such fees shall not exceed fifty cents per page.

14. Section 1-212, G.S., additionally provides, in relevant part, that:

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.

....

(d) The public agency shall waive any fee provided for in this section when: (1) [t]he person requesting the records is an indigent individual....

15. At the hearing on this matter, the Police Secretary for the respondent police department (“Secretary”) testified on behalf of the respondents. Based upon her testimony, it is found that, as of the date of the hearing on this matter, the complainant had not paid the copying fees set forth in the respondents’ January 19, 2024 letter described in paragraph 10, above, and therefore the respondents have not released any of the requested records to the DOC.

16. At the hearing on this matter, the complainant testified, and it is found that, prior to the requests describe in paragraphs 2 and 4, above, he had previously submitted a request for the same records to the DOC legal affairs unit and that, with respect to that request, he had filed an appeal against the respondents with the Commission. See Darius Armadore v. Brian M. Wright, Chief, Police Department, City of New London, et al., Docket #FIC 2023-0029 (September 13, 2023) (“#FIC 2023-0029”). It is found, however, that the complainant ultimately withdrew his complaint in #FIC 2023-0029.

17. The Commission takes administrative notice of the Final Decision in #FIC 2023-0029, which states, in relevant part, as follows:

At the hearing in this matter, the respondents’ witness testified that the respondents had not received the complainant’s request and were unaware of such request until they received the notice of complaint in this matter. The complainant testified that he was not familiar with the process for requesting records under the FOI Act, and acknowledged that he did not send his request directly to the respondents prior to filing the complaint with the

Commission. Thereafter, the complainant stated on the record that he wished to withdraw the complaint.

18. At the hearing on this matter, the Secretary testified that, in #FIC 2023-0029, the complainant was advised that he needed to submit his records request directly to the respondent police department.

19. At the hearing on this matter, the complainant argued that he was told, during the #FIC 2023-0029 proceedings, that if he submitted his request to the respondents, they would provide him with all of the records and that, in compliance with such instruction, he submitted the requests described in paragraphs 2 and 4, above. The complainant argued that he should not be required to pay the statutory fees because the respondents did not inform him, during the #FIC 2023-0029 proceedings, that he would be required to pay any fees to receive such records. The Commission notes that the complainant, however, did not testify that the respondents ever promised to provide the records free of charge.

20. “Waiver is the intentional relinquishment or abandonment of a known right or privilege.... [V]arious statutory and contract rights may be waived.” (Citations omitted; internal quotation marks omitted.) New Haven v. Local 884, Council 4, AFSCME, AFL-CIO, 237 Conn. 378, 385–86 (1996). “To determine the presence of waiver, there must be evidence of intelligent and intentional action by the petitioner of the right claimed to be waived.” Krevis v. City of Bridgeport, 262 Conn. 813, 823 (2003).

21. Based upon the complainant’s and the Secretary’s testimony, as well as the Final Decision in #FIC 2023-0029, it is found that the complainant failed to prove that, during the course of the #FIC 2023-0029 proceedings or any time thereafter, the respondents intentionally waived the right to collect the copying fees permitted by §1-212(a)(B), G.S.

22. With respect to whether the complainant has demonstrated that he is indigent within the meaning of §1-212(d)(1), G.S., the term “indigent individual” is not defined in the FOI Act. However, in May v. Freedom of Info. Comm’n, No. HHBCV064011456, (Conn. Super. Ct. Apr. 30, 2007), the court agreed with the Commission that the FOI Act permits each custodial public agency the discretion to set its own standard of indigence, provided the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.

23. Based upon the Secretary’s testimony, it is found that the respondent police department’s indigency policy requires an inmate to submit a request for a fee waiver and that the policy examines the funds available in the inmate’s trust account for the six months preceding the date of the request.

24. It is found that it was not unreasonable for the respondents to require the complainant to submit a waiver request and provide information regarding the funds available in his trust account. See, e.g., Luis Colon Ortega v. Fernando Spagnolo, Chief, Police Department, City of Waterbury, et al., Docket #FIC 2020-0251 (April 27, 2021).

25. It is found that the complainant had not submitted a request for a fee waiver, nor provided proof of indigency pursuant to the respondents’ indigency policy.

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

27. 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 or requested a fee waiver and provided sufficient proof of indigency.

### **Promptness**

28. With regard to the complainant's allegation that the respondents' actions were not prompt, 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.

29. 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.

30. At the hearing on this matter, the Secretary testified, and it is found, that she has been employed with the respondent police department for a total of seventeen years and, prior to serving as the police secretary, she worked as a records clerk for the respondent police department. It is further found that the Secretary was responsible for processing FOI requests in both capacities; however, in her role as the police secretary, she is responsible for processing "major" requests, which include requests beyond simple requests, such as those seeking police reports.

31. It is found that, at the time of the complainant's requests described in paragraphs 2 and 4, above, the respondents had received seven "major" requests ahead of the complainant's, which included hundreds to thousands of pages of records requiring review. It is found that the Secretary began the response to the complainant's records requests described in paragraphs 2 and 4, above, by compiling, reviewing and copying the personnel file for Detective Richard Curcuro. It is found that the respondents informed the complainant, by letter dated January 19, 2024, described in paragraph 10, above, that such records were ready to be disclosed upon payment of the statutory fees; however, as found in paragraphs 11, 15 and 25, above, the complainant did not respond to such letter, pay the statutory fee, nor did he request a fee waiver. It is further found that, as of the date of the hearing on this matter, the respondents were still in the process of compiling and reviewing additional responsive records, which consisted of thousands of pages and involved a review of voluminous records from a homicide investigation. It is also found that the respondent police department has limited staff to process records requests, and that the Secretary is the sole staff member who processes and reviews major requests. It is additionally

found that the complainant did not express a need to receive the requested records expeditiously.

32. It is found that the respondents' actions regarding the search, review, and preparation of records for the complainant were prompt under the circumstances of this case.

33. Accordingly, it is concluded that the respondents did not violate the promptness provisions of §1-212(a), G.S., as alleged by the complainant.

**NLCC 11-003**

34. At the hearing, the complainant also contended that the respondents should have known that NLCC 11-003 was a New London cold case file and that they should provide him with such file.

35. At the hearing, the Secretary testified, and it is found, that she had never previously encountered a request for a cold case and, thus, was unfamiliar with such a file designation. Based upon her testimony, it is further found that she inquired with Detective Curcuro of the respondent police department, who informed her that the file was a cold case file and that the Office of the State's Attorney for the State of Connecticut (the "State's Attorney's Office") had possession of the file, not the respondent police department. The Secretary testified, and it is found, that she did not personally know whether the respondent police department had access to the file since it had been transferred to the State's Attorney's Office.

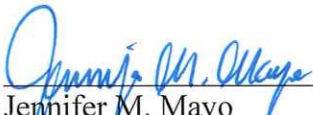
36. Because the Commission has determined that the complainant has failed to pay the required fee, failed to request a fee waiver, and failed to prove that he is indigent, it need not consider whether the FOI Act required the respondents to request and obtain the file described as NLCC 11-003 from the State's Attorney's Office.

37. Having found no violations of the FOI Act by the respondents, no civil penalty is warranted.

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 September 25, 2024.

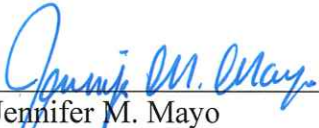
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**DARIUS ARMADORE, #287127**, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

**BRIAN WRIGHT, CHIEF, POLICE DEPARTMENT, CITY OF NEW LONDON;  
POLICE DEPARTMENT, CITY OF NEW LONDON; AND CITY OF NEW LONDON**,  
c/o Attorney Brian K. Estep, Conway, Londregan, Sheehan & Monaco, P.C., 38 Huntington Street, PO Box 1351, New London, CT 06320

  
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Jennifer M. Mayo  
Acting Clerk of the Commission