



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Jose Ayuso,
Complainant(s)
against

Notice of Meeting
Docket #FIC 2014-140

Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of Scientific Services; and State of Connecticut, Department of Emergency Services and Public Protection, Division of Scientific Services,
Respondent(s)

January 2, 2015

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, January 28, 2015**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE January 14, 2015**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE January 14, 2015**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fourteen (14) copies** be filed **ON OR BEFORE January 14, 2015**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Jose Ayuso
Assistant Attorney General Terrence M. O'Neill
cc: Craig Washington

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Jose Ayuso,

Complainant

against

Docket #FIC 2014-140

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection, Division of Scientific
Services; and State of Connecticut,
Department of Emergency Services and
Public Protection, Division of Scientific
Services;

Respondents

December 1, 2014

The above-captioned matter was heard as a contested case on November 26, 2014, at which time the complainant and respondents appeared 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 on February 17, 2014, the complainant requested from the respondents copies of:

Items inventoried in evidence in the case of Jose A. Ayuso. Dated incident June 5, 2003 case #03-25694, Laboratory case # is ID-03-001424. Any and all information on tested item #E-55 Glock semi-auto pistol #23. (1) Results of any and all examinations done to E-55. (2) Also submitted was a magazine for E-55 pistol, requesting any and all documentation of the results of the examination of magazine. (3) Any and all information on what is the round capacity for that specific magazine of E-55. (4) Also documentation of all information dealing with specifications of E-55 magazine. (5) Any and all information

submitted to the NIBIN system on case #1001875 and also what was submitted to the IBIS system regarding the test fire results and specimens.

3. It is found that the respondents received the complainant's request on March 3, 2014.

4. It is found that the respondents received lab report ID-03-001424 from the Division of Scientific Services on March 7, 2014.

5. It is found that the respondents communicated with the Department of Correction ("DOC") regarding the records they contemplated delivering to the complainant, as required by §1-210(c), G.S., which provides:

Whenever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Division 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 Division 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 Division facility.

6. It is found that the respondents received approval from DOC to release the records to Mr. Ayuso on March 18, 2014, and that the records were mailed to him on that date.

7. It is found that the respondents also located a copy of a firearms worksheet associated with lab report ID-03-001424 and an evidence inventory; received approval from DOC on April 2, 2014 to provide the additional records to the complainant; and mailed the additional records to him on that day.

8. By letter of complaint filed March 11, 2014, 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 he requested.

9. Section 1-200(5), G.S., defines "public records" as follows:

Public 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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

10. Section 1-210(a), G.S., provides, in relevant part:

Except 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

11. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

12. It is concluded that the records provided to the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

13. It is found that the records provided to the complainant are all of the records in the custody of the respondents that are responsive to the complainant's request.

14. The complainant maintains that the records do not answer all of his questions, including his question as to how the magazine capacity of the pistol was determined.

15. It is found, however, that the FOI Act does not require the respondents to answer the complainant's questions about how they conducted the tests that are reported in the records he received in response to his request in this case.

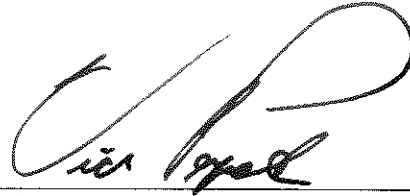
16. The complainant requested at the hearing that the Commission order the respondents to provide an affidavit attesting to the fact that the respondents have no records responsive to paragraph 5 of his request, namely "Any and all information submitted to the NIBIN system on case #1001875 and also what was submitted to the IBIS system regarding the test fire results and specimens." The complainant presented no testimony or evidence concerning what the NIBIN or IBIS systems are, but the Commission takes administrative notice of the fact that the National Integrated Ballistic Information Network ("NIBIN") is a specialized computer network administered by the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") that contains digital images of recovered pieces of ballistic evidence, and provides federal, state and local law enforcement forensic science agencies with an automated ballistic imaging system to aid their investigations by using digital images of shell casings to link violent crimes involving firearms and subsequently identify firearm users. The Commission also takes administrative notice of the fact that the Integrated Ballistics Identification System ("IBIS") is the identification system used by NIBIN.

17. The Commission declines to issue such an order. However, in an effort to address the complainant's concern, it is specifically found that the respondents have no records responsive to paragraph 5 of the complainant's request.

18. It is concluded that the respondents did not violate the FOI Act as alleged.

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.

A handwritten signature in black ink, appearing to read "Victor R. Perpetua", written over a horizontal line.

Victor R. Perpetua
as Hearing Officer