



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

James Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-932

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

Respondent(s)

July 30, 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, August 26, 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 August 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 August 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 **fifteen (15) copies** be filed **ON OR BEFORE August 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: James Torlai
James W. Caley, Esq.

2015-07-30/FIC# 2014-932/Trans/wrbp/KKR/CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

James Torlai,

Complainant

against

Docket #FIC 2014-932

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

Respondents

July 30, 2015

The above-captioned matter was heard as a contested case on June 12, 2015, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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 November 20, 2014, the complainant requested “copies of any and all complaints filed against [Trooper] Bruce LaChance.”
3. It is found that, by letter dated November 25, 2014, the respondents’ legal affairs unit acknowledged the request, described in paragraph 2, above, and informed the complainant that it would be “reviewed and processed in accordance with the provisions of the Freedom of Information Act and any other applicable provision of law.”
4. It is found that, by letter dated December 13, 2014, the complainant, having not received any records responsive to his November 20th request, reiterated such request.
5. It is found that, by letter dated December 17, 2014, an attorney in the legal affairs unit informed the complainant that “a record request was sent to the Professional Standards Unit, [and that] [o]nce that unit responds, we will be able to further process your request.”
6. By letter dated and filed December 26, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records, described in paragraph 2, above.

7. It is found that, by letter dated June 8, 2015, the respondents provided the complainant with copies of two complaints responsive to the request, described in paragraph 2, above. It is found that, in addition to these two complaints, the respondents maintain one other responsive record, consisting of a report of an internal affairs investigation conducted by the Hartford Police Department (HPD), during the time that Trooper LaChance was employed by HPD (the "HPD report"). However, the respondents withheld the HPD report from the complainant, claiming it is exempt from disclosure pursuant to §§5-225 and 1-210(b)(6), G.S.

8. At the hearing in this matter, the complainant contended that the respondents failed to promptly provide to him copies of the two complaints, described in paragraph 7, above. In addition, he disputed the applicability of the exemptions relied upon by the respondents with regard to the HPD report.

9. Section 1-200(5), G.S., provides:

"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, 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.

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

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... (3) receive a copy of such records in accordance with section 1-212.

11. 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."

12. It is found that the records described in paragraph 7, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

13. With regard to the complainant's claim that the respondents failed to promptly provide him with copies of the two complaints, the respondents claimed that the six month delay in providing such records to the complainant resulted from "too many FOI requests" generally, with too few staff to respond to them. The attorney in the legal affairs unit charged with responding to the request, described in paragraph 2, above, testified, and it is found that this request "got lost in the shuffle."

14. Based upon the foregoing, it is concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-210(a), G.S., with respect to the two complaints, described in paragraph 7, above.

15. With regard to the respondents' claim that the HPD report is exempt from disclosure pursuant to §5-225, G.S., that section, entitled: "Notice of final earned ratings on examinations. Right of inspection. Appeals," provides, in relevant part:

All persons competing in any examination shall be given written notice of their final earned ratings and the minimum earned rating necessary to pass the examination. Not later than thirty days after the issuance of the final earned rating, a person who has not achieved a passing rating may inspect his or her papers, markings, background profiles and other items used in determining the final earned ratings, other than examination questions and other materials constituting the examination....

16. It is found that Trooper LaChance applied, and was hired, for the position of state police trooper trainee. The state police recruitment supervisor testified, and it is found, that the application for the position of state police trooper trainee consists of the results of a written examination, a polygraph examination, and a background investigation report. It is found that the applications are competitively scored based on a number of different factors, and that the candidates with the highest average scores are then selected. It is further found that the HPD report was part of the background investigation component of the examination, and was one of the items used in determining the final earned rating of Trooper LaChance's examination for the position of state police trooper trainee.

17. In Mark Dumas and the Connecticut State Police Union v. Donald DeFronzo, Commissioner, Department of Administrative Services, et al., Docket #FIC 2013-663, the Commission concluded that §5-225, G.S., provides a right of inspection of "papers, markings, background profiles and other items used in determining the final earned ratings...for only those persons who have taken and failed an examination.

18. In Personnel Director, Department of Income Maintenance v. Freedom of Information Commission, 214 Conn. 312 (1990), the Supreme Court concluded that §5-225, G.S., provides an exception to disclosure to persons other than the test-taker:

In conclusion, [§1-210(a)] provides that all records kept on file by public agencies shall be public records '[e]xcept as provided by any federal law or state statute.' We hold that §5-225...provide[s] such an exception for the requested personnel files, which contained the promotional examination records of candidates for program supervisor other than the candidate's own records.

Id. at 321.

19. The complainant argued that the respondents' claim that §5-225, G.S., exempts the HPD report in its entirety should be rejected because this Commission previously rejected the claim that reports of pre-employment background investigations are exempt from disclosure, citing James Torlai v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; Division of State Police, et al., Docket #FIC 2013-167 (January 8, 2014). However, in that case, the respondents did not raise §5-225, G.S.,¹ and the Commission therefore did not consider whether, under certain circumstances, §5-225, G.S., may provide an exemption to disclosure of a pre-employment background investigation report.

20. The Commission has long held that disclosure of reports of internal affairs investigations, such as the HPD report, does not constitute an invasion of personal privacy of the subject of such report, pursuant to §1-210(b)(2), G.S., except in the rare case where the misconduct does not relate to official business. See Ioannis Kaloidis v. Chief, Police Department, City of Waterbury, et al., Docket #FIC 2013-047 (December 18, 2013). The Commission also consistently has held that such reports are not records compiled in connection with the detection or investigation of crime, and that therefore they do not fall within the so-called "law enforcement" exemption contained in §1-210(b)(3), G.S. See Kevin Litten and the Waterbury Republican-American v. Chief, Police Department City of Torrington, et al., Docket #FIC 2012-711 (July 24, 2013).

21. Based upon the facts and circumstances of this case, however, in which the HPD report was, among other items, used by the respondents to determine the final earned rating of Trooper LaChance's examination for the position of state police trooper trainee, it is found that the HPD report in its entirety is exempt from disclosure pursuant to §5-225, G.S.

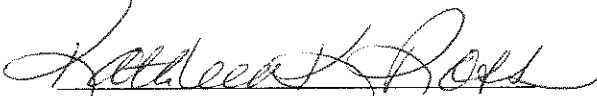
22. Accordingly, it is found that the respondents did not violate the FOI Act by withholding the HPD report, described in paragraph 7, above, from the complainant.

23. Based upon the findings and conclusions in paragraphs 21 and 22, above, it is not necessary to consider the respondents' alternative claim that the HPD report is exempt from disclosure pursuant to §1-210(b)(6), G.S.

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

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

¹ Rather, the respondents claimed the pre-employment background investigation report was exempt from disclosure in its entirety based on their "policy," and §§1-210(b)(10), and (19), G.S., §1-217, G.S., and Article 9, Section 3 of the NP-1 collective bargaining agreement.



Kathleen K. Ross
as Hearing Officer

FIC 2014-932hor/kkr/07302015