



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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James Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-292

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

Respondent(s)

April 4, 2016

Transmittal of Proposed Final Decision Dated March 31, 2016

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 dated March 31, 2016, 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, April 13, 2016**. 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 April 11, 2016*. 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 April 11, 2016*. **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 April 11, 2016* 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
Assistant Attorney General James Caley

FIC# 2015-292/Trans/wrbp/TCB//CAL/2016-04-04-16

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Third Report of
Hearing Officer

James Torlai,

Complainant

against

Docket #FIC 2015-292

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

Respondents

March 31, 2016

The above-captioned matter was heard as a contested case on September 2, and October 27, 2015, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

The report of hearing officer was issued on December 8, 2015, after which the respondents moved to reopen the hearing in the above-captioned matter, which motion was filed on December 9, 2015. The hearing officer granted the motion.

By order of the hearing officer, the hearing was reopened by notice issued December 22, 2015 for the purpose of taking testimony and exhibits from the respondents. The reopened hearing was held on January 25, 2016, at which time the complainant and the respondents appeared and presented additional testimony, exhibits and argument on the complaint.

At the request of the respondents, this Commission takes administrative notice of the administrative record and the decision in Docket #FIC 2014-013, James Torlai v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police; and State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police. The evidence admitted in that

case is hereby admitted as evidence in this matter pursuant to the Regulations of Connecticut State Agencies §1-27j-37(e).

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 7, 2014, the complainant made a request to the respondents for a copy of all records related to CFS 12-0015918 and specified that his request included, but was not limited to, all reports related to the arrest, all video, audio or other recordings related to the arrest, all test results related to the DWI (Driving While Under the Influence) charge and all records prepared for the Department of Motor Vehicles.
3. It is found that by letter dated March 10, 2014, the respondents acknowledged the complainant's request.
4. It is found that the respondents provided the complainant with records responsive to his March 7, 2014 request at a June 16, 2014 FOI Commission hearing related to a similar request. It is found that the records were redacted and that the text on the right margin of some of the records was not fully copied during the copying process.
5. It is found that by letter dated November 30, 2014, five months later, the complainant informed the respondents that they had not provided him with all of the records responsive to his March 7, 2014 request. It is found that the complainant also requested unredacted copies of the records he was provided on June 16, 2014 and informed the respondents that the records "were copied sideways" in reference to the fact that the records were not fully copied during the copying process.
6. It is found that by letter dated April 7, 2015, the complainant renewed his March 7, 2014 request and asked the respondents inform him if more records would be forthcoming.
7. By letter dated April 20, 2015 and filed on April 22, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his April 7, 2015 request to more fully comply with his March 7, 2014. The complainant alleged that the respondents had failed to provide all of the records responsive to his request and that they had made improper redactions to the records that were did provided.
8. 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.

9. 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

10. 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.”

11. It is found that the requested records described in paragraph 2, above, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

12. It is found that between July 31, 2015 and the September 2, 2015 hearing in this matter, the respondents continued to communicate with the complainant and make efforts to comply with his request, which included providing the complainant with another copy of the records provided to him on June 16, 2014 but with the text fully copied. It is also found that the complainant was provided with a copy of the arrest stamp in response to his March 7, 2014 request on September 2, 2015.

13. At the hearing on this matter, the complainant stated that while he received some records responsive to his request, he had not received the following records related to CFS 12-0015918:

- a. CAD (computer-aided dispatch) notes;
- b. the DWI log book entry;
- c. the chain of custody records related to the video recording; or
- d. the license revocation form.

The complainant also claimed that the video he received was distorted and that he wanted one without the distortions and/or on VHS cassette tape. The complainant also challenged the redactions made to the records that were provided. Finally, the complainant contended that the respondents were not prompt in complying with his request.

14. With respect to the CAD notes related to the arrest, described in paragraph 13(a), above, it is found that the respondents did not understand the complainant's March 7, 2014 request to include a request for a copy of the CAD notes related to the arrest until the September 2, 2015 hearing. It is found that the respondents provided the complainant with a copy of those records at the October 27, 2015 hearing on this matter.

15. With respect to the DWI log book entry related to the arrest, described in paragraph 13(b), above, it is found that the respondents provided the complainant with a record they reasonably believed was responsive to his request for the DWI log book entry on June 16, 2014.

16. However, at the September 2, 2015 hearing on this matter, the complainant contended that the record the respondents provided was not the log book entry he sought. The complainant explained that he was seeking the log book entry associated with the breathalyzer test taken by the arrestee and the test strip generated from that test.

17. It is found that the respondents were not aware that there was any other log book entry until the September 2, 2015 hearing in this matter when the complainant provided a description and explained more precisely the record he sought.

18. It is found that the respondents provided the complainant with a copy of the log book entry associated with the breathalyzer test taken by the arrestee at the October 27, 2015 hearing on this matter.

19. With respect to the chain of custody records related to the video recording of the arrest, described in paragraph 13(c), above, it is found that any and all chain of custody records related to CFS 12-0015918 were provided to the complainant on June 16, 2014.

20. With respect to the license revocation form, described in paragraph 13(d), above, it is found that the record was provided to the complainant on June 16, 2014.

21. With respect to the video recording, described in paragraph 13, above, the issue is whether the original VHS video recording related to CFS 12-0015918 has the same distortions that appear in the copy of the video the complainant was provided.

22. It is found that, because the original VHS video recording was distorted, the respondents had it copied at their forensic lab to a DVD in an effort to have the best copy of the recording made for the complainant.

23. At the hearing on this matter, the respondents represented, and it is found, that the complainant was provided with a complete and accurate copy of the original VHS video recording related to CFS 12-0015918.¹

24. With respect to the redactions made to the responsive records, it is found that the respondents redacted information from the arrest report as follows:

- a. the operator license number;
- b. the offense/incident type;
- c. the telephone numbers;
- d. social security numbers; and
- e. the charge.

25. The respondents claimed that the redactions described in paragraphs 24(a) through 24(d), above, are required pursuant to §14-10, G.S., because the redacted information is personal information obtained from the Department of Motor Vehicles through the Connecticut On-Line Law Enforcement Communications Teleprocessing ("COLLECT") System.

26. The complainant contended that the respondents' witness was not a state trooper and could not credibly testify that the arresting officer in this case actually obtained the personal information from DMV and not the arrestee. He contended that, therefore, the respondents failed to prove that the redacted information was provided by the DMV and subject to the provisions of §14-10, G.S.

27. Section 14-10(a)(3), G.S., provides that:

"Personal information" means information that identifies an individual and includes an individual's photograph or computerized image, Social Security number, operator's license number, name, address other than the zip code, telephone number, electronic mail address, or medical or disability information, but does not include information on motor vehicle accidents or violations, or information relative to the status of an operator's license, registration or insurance coverage.

28. Section 14-10(f)(1), G.S., provides that the Commissioner of the Department of Motor Vehicles ("DMV") may disclose personal information from a motor vehicle record to ... [a]ny federal, state or local government agency in carrying out its functions or to any individual or entity acting on behalf of any such agency."

¹ It is found that the respondents offered the complainant an opportunity to inspect the original VHS video recording related to CFS 12-0015918 but, for his own reasons, the complainant did not avail himself of that opportunity.

29. Section 14-10(g), G.S., provides that:

[a]ny person receiving personal information or highly restricted personal information from a motor vehicle record pursuant to subsection (f) of this section shall be entitled to use such information for any of the purposes set forth in said subsection for which such information may be disclosed by the commissioner. No such person may resell or redisclose the information for any purpose that is not set forth in subsection (f) of this section, or reasonably related to any such purpose.

30. It is found that the offense/incident type, described in paragraph 24(b), above, is not personal information within the meaning of §14-10(a)(3), G.S., and is not required to be redacted pursuant to §14-10(g), G.S.

31. It is concluded that the respondents violated the FOI Act by failing to disclose the records described in paragraph 24(b), above, to the complainant.

32. It is found that the redacted information described in paragraph 24(a), 24(c) and 24(d) is personal information within the meaning of §14-10(a)(3), G.S., and that such information is subject to the provisions of §14-10(g), G.S., and cannot be redisclosed by the respondents to the complainant.

33. With respect to the redactions described in paragraph 24(e), above, the respondents originally claimed that because the arrestee was convicted of a lesser criminal charge, the original criminal charge noted in the arrest record was erased in accordance with §54-142(c), G.S.

34. At the January 25, 2016 hearing on this matter, however, the respondents withdrew their claim of erasure and offered to provide the complainant with a copy of the requested records without the redactions described in paragraph 24(e), above. Consequently, the application of §54-142(c), G.S., to the requested records will not be addressed herein. However, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to provide the complainant with a copy of the arrest report without the redactions described in 24(e), above.

35. Finally, the complainant contended that the respondents were not prompt in complying with his request as required by the FOI Act. The complainant specifically claimed that the respondents' failure to provide the requested records without the redactions described in paragraph 24(e), above, violated the promptness provisions of §1-210, G.S., because the respondents deliberately misapplied the erasure provisions of §54-142a(c), G.S.

36. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the

amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; 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 loss of the personnel time involved in complying with the request.” See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

37. It is found that:

- a. all records requests are complied with by the legal affairs unit of the respondent department;
- b. the breadth of the legal affairs unit’s responsibilities is vast and includes providing legal support to approximately 1,700 managers and employees, the Office of the Attorney General and private counsel handling agency matters as well as responding to the hundreds of records requests it receives a year;
- c. the legal affairs unit, has only a total of 7 positions when fully staffed; and
- d. the complainant himself made numerous other records requests after his March 7, 2014 request to which the legal affairs unit is working to respond.

38. It is also found that the legal affairs unit has to rely on other units or divisions to search for and forward responsive records to it and that it began its efforts to compile the records from those other agencies as soon as reasonably possible consistent with the respondents’ “first in time first in line” policy and practice. It is also found that those other units receive requests to provide records related to other matters, such as court proceedings, as well as FOI requests requiring the employees to prioritize compliance with each request on an as needed basis to the extent that they are aware of when the records are needed.

39. It is also found that the complainant made requests for some of the same records prior to his March 7, 2014 request, and that although he intended his March 7, 2014 request to help correct alleged problems with the respondents’ compliance with those prior requests, the redundancy of the March 7, 2014 request only created more confusion which resulted in further delays.

40. Finally, it is found that the respondents failed to provide some of the responsive records to the complainant because the requests were not clear and the respondents did not understand what he was seeking. It is found that after the

complainant explained during the September 2, 2015 hearing what records he was seeking, the respondents searched for and provided the complainant with those records.

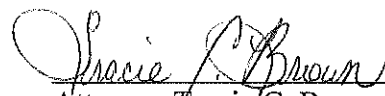
41. With respect specifically to the respondents' delay in providing the complainant with a copy of the requested records without the redactions described in paragraph 24(e), above, it is found that the respondents initially had a good faith belief that the original charge was subject to the erasure provisions of §§54-142a and 54-142c(a), G.S., and, therefore, did not deliberately delay disclosing the requested records without the aforementioned redactions as the complainant contends.

42. Weighing all the factors related to the request, it is found that the respondents have not unduly delayed compliance with the complainant's request in this case and it is concluded that they did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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

1. Forthwith, the respondents shall provide the complainant with a copy of the requested records without the redactions described in paragraph 24(b) and 24(e), of the findings, above.

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



Attorney Tracie C. Brown
as Hearing Officer