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Sandra Staub and the American Civil Liberties
Union Foundation of Connecticut,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-126

Chief, Police Department, City of Stamford; and
Police Department City of Stamford,
Respondent(s)

December 10, 2012

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 9, 2013**. 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 December 18, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE December 18, 2012**. **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 December 18, 2012**, 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: David J. McGuire, Esq.
Sandra Staub
Burt Rosenberg, Esq.

2012-12-10/FIC# 2012-126/Trans/wrbp/CAL/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Sandra Staub and The
American Civil Liberties Union
Foundation of Connecticut,

Complainants

against

Docket #FIC 2012-126

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

Respondents

December 10, 2012

The above-captioned matter was heard as a contested case on October 16, 2012, at which time the complainants and the respondents appeared, stipulated to certain facts 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 January 6, 2012, the complainants, jointly with the Council on American-Islamic Relations ("CAIR"), requested that the respondents provide them with responses to six inquiries and with copies of records in five categories, as follows:

Inquiries:

- a. Is the [Stamford Police Department ("SPD")] aware of any past or current [New York Police Department ("NYPD")] surveillance initiatives in Stamford, CT from June 2009 to the present?
- b. Did the SPD consent, assist, encourage, or fail to deter any and all known NYPD activities in Stamford, CT from June 2009 to the present?
- c. Has the SPD been involved in a joint or mutual investigation with the NYPD regarding any subject

matter from June 2009 to the present?

- d. Are there any memorandums of understanding or other such documents evincing guidelines governing mutual or joint efforts between the SPD and NYPD that were implemented or otherwise in effect from June 2009 to the present?
- e. Has the SPD adopted a written policy that provides guidelines for mutual cooperation in a joint investigation or initiative between the SPD and another police department or law enforcement agency?
- f. Has the SPD engaged in any surveillance initiatives against Islamic communities independently or in cooperation with another law enforcement agency from June 2009 to the present?

Records Requests:

- a. All correspondence or other such documents between the SPD and the NYPD from June 2009 to the present.
- b. All memorandums of understanding or other such documents between the SPD and the NYPD that were initiated or otherwise in effect at any time from June 2009 to the present.
- c. All copies of documents relating to SPD investigations or surveillance initiatives of Muslim communities, whether conducted independently or in cooperation with another agency, from June 2009 to the present.
- d. All copies of written policies adopted by the SPD governing joint investigations with other law enforcement agencies that were initiated or in effect from June 2009 to the present.
- e. All documents or reports indicating the SPD's awareness of the presence of NYPD officers engaging in surveillance activities or other investigations of Muslim communities in Stamford, CT from June 2009 to the present.

3. It is found that, by letter dated January 11, 2012, the respondents acknowledged the complainants' request, stating that the SPD would "conduct a review of its records to

ascertain if any such records exist.” The acknowledgement also informed the complainants that, pursuant to the Freedom of Information Act (“FOIA”), the respondents were only required to produce non-exempt records, and were not required to answer the six questions. The acknowledgement further requested that, in order to reduce the search time, the complainants narrow the records requests described at paragraph 2, Records Requests, a), b), and e), to “all documents concerning Muslim communities”. Finally, the acknowledgement stated that, in the event that the SPD maintained records within the scope of the request, it may be obligated to seek a determination from the Commissioner of the Department of Emergency Management and Homeland Security as to whether disclosure of the requested records would pose a threat to public safety, pursuant to §1-200(b)(19), G.S.

4. It is found that, by letter dated January 18, 2012, the complainants, along with CAIR, noted that the request described at paragraph 2, Records Requests, e), was already limited to “investigations of Muslim communities” and agreed to revise their requests described at paragraph 2, Records Requests, a) and b), “so that each ends with the following clause: relating to investigation or surveillance of Muslim communities”.

5. It is found that, by letter dated February 17, 2012, the complainants, along with CAIR, renewed the January 6, 2012 request, as set forth in paragraph 2, above. The complainants also stated that they believed that they had allowed more than sufficient time for the respondents to respond to the request, and that they intended to file a complaint with the Commission if the respondents failed to forward the responsive records to them by March 1, 2012.

6. By letter dated March 2, 2012 and filed March 5, 2012, the complainants appealed to this Commission, alleging that the respondents violated the FOIA by denying their request for copies of the records described in paragraph 2, above.

7. 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.

8. 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.

9. 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.”

10. With respect to the “Inquiries” listed in paragraph 2, above, nothing in the FOIA requires a public agency to answer questions. Therefore, it is concluded that the respondents did not violate the FOIA by refusing to provide answers to the six questions posed by the complainants.

11. With respect to the requests for records in paragraph 2, above, it is found that, while they were not obligated to do so, the complainants clearly articulated their purpose in their initial correspondence, explaining to the respondents that they were seeking to obtain information and records “to ascertain whether or not the NYPD conducted counter-terrorism surveillance in Stamford, Ct and if so, whether it was done with the cooperation or consent of the . . . SPD.” The Commission takes administrative notice of the extensive media reports which caused the complainants to state: “[w]e understand that the . . . NYPD has engaged in a counter-terrorism campaign in the aftermath of 9/11.” Complainants explained at the hearing that CAIR wanted to give specific facts about this counter-terrorism campaign to the Muslim community in Stamford in order to calm fears.

12. It is found that, following the initial response of January 11, 2012, the respondents did not communicate further with the complainants until counsel for the respondents informed complainant Staub on August 30, 2012 that Sgt. Richard Colwell reported that he was not aware of any records maintained by the respondents within the scope of the request. Sgt. Colwell had been assigned to represent the SPD on the F.B.I. Joint Terrorism Task Force from October 2009 to May 2012. It is further found that Sgt. Colwell did an initial search for the requested records in August 2012. The Commission issued its order to show cause in this case on August 8, 2012 and counsel for the respondents informed complainant Staub concerning the initial search at the Commission’s offices on the date initially set for a hearing (as stated above, August 30, 2012).

13. Following August 30, 2012, Sgt. Colwell conducted a more extensive search for the requested records. Sgt. Colwell queried: a) Chief of Police Nivakoff; b) Assistant Chief Matheny who was responsible for the administrative functions of the Department; c) Assistant Chief Fontneau who was responsible for Investigations and Patrol; d) Cpt. Conghlin who was responsible for the Detective Bureau; and e) Sgt. Vitti who was responsible for Records. None of these persons reported maintaining any documents within the scope of the records request.

14. Finally, it is found that Sgt. Colwell testified that there had been a memorandum for the Joint Anti-Terrorism Task Force, conducted with the F.B.I., but that in his search, no one could locate it. It is found that the respondents do not maintain such a memorandum.

15. It is found that the period from January 11, 2012 to August 30, 2012 constituted 232 days, or seven months and twenty days. After stating that the SPD would “conduct a review of its records to ascertain if any such records exist”, it took the respondents nearly eight months to begin to perform the task that they had undertaken.

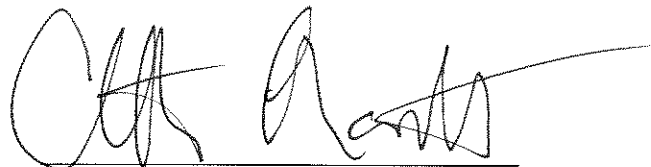
16. Based on the findings in paragraphs 12 through 14, above, it is concluded that the respondents conducted a thorough search for the requested records. In their brief, the complainants argue in a single paragraph (p. 9) that the respondents should obtain from the F.B.I. a copy of the memorandum discussed at paragraph 14, above, citing First Selectman, Town of Columbia v. FOIC, CV 000501055 (November 28, 2000), 2000 Conn. Super. LEXIS 3200. However, in First Selectman, Town of Columbia v. FOIC, *supra*, records, originally in the possession of the town, were transferred to the town’s attorney. These facts are not analogous to obtaining from the F.B.I. a copy of its own memorandum. The F.B.I. is not an agent of the respondents like the town attorney was with his client, the First Selectman. The respondents have no FOIA obligation to attempt to obtain a copy of the memorandum at issue from the F.B.I.

17. At the hearing and in the post hearing briefs, there was considerable discussion of the Commission precedent stating the rule that a public agency has no duty to inform a requestor when it maintains no records responsive to a request. Smith v. FOIC, CV 115015510S, 2012 Conn. Super. LEXIS 2224 (August 30, 2012). However, this case is also significantly different and distinguished from Smith v. FOIC, *supra*, where the focus was not on the duty to search. Here the sworn testimony was that the search did not even begin until over seven months after the acknowledgement. In simple language, a public agency has a duty to do a search and has to do the search subject to the normal rule of promptness. If a public agency fails for many months to do a search, it cannot then hide behind the rule that there is no legal requirement to notify the complainants that no records exist within the scope of the request.

18. Based on the findings in paragraphs 3, 12, and 15, it is concluded that the respondents violated the promptness requirement of §§1-210(a) and 1-212(a), G.S., by failing to conduct their search for responsive records in a timely manner. Sections 1-210(a) and 1-212(a), G.S., require prompt inspection and prompt receipt of copies of public records. These statutory promptness requirements cannot be satisfied without an underlying prompt search for requested records.

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 requirements of §§1-210(a) and 1-212(a), G.S., including the requirement to do a prompt search.

A handwritten signature in black ink, appearing to read 'Clifton A. Leonhardt', written over a horizontal line.

Clifton A. Leonhardt
as Hearing Officer

FIC2012-126/HOR/CAL/12/10/2012