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# FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2012-127

Chief, Police Department, City of Bridgeport;  
and Police Department, City of Bridgeport,  
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  
Arthur Laske, Esq.

2012-12-10/FIC# 2012-127/Trans/wrbp/VDH//LFS

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Sandra Staub, Esq. and the  
American Civil Liberties Union  
Foundation of Connecticut,

Complainant

against

Docket #FIC 2012-127

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

Respondents

December 7, 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, as follows:

Inquiries:

- a. Is the [Bridgeport Police Department ("BPD")] aware of any past or current [New York Police Department ("NYPD")] surveillance initiatives in Bridgeport, CT from June 2009 to the present?
- b. Did the BPD consent, assist, encourage, or fail to deter any and all known NYPD activities in Bridgeport, CT from June 2009 to the present?
- c. Has the BPD 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 BPD and NYPD that were implemented or otherwise in effect from June 2009 to the present?
- e. Has the BPD adopted a written policy that provides guidelines for mutual cooperation in a joint investigation or initiative between the BPD and another police department or law enforcement agency?
- f. Has the BPD 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 BPD and the NYPD from June 2009 to the present.
- b. All memorandums of understanding or other such documents between the BPD 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 BPD 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 BPD 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 BPD's awareness of the presence of NYPD officers engaging in surveillance activities or other investigations of Muslim communities in Bridgeport, CT from June 2009 to the present.

3. It is found that, by letter dated January 12, 2012, the respondents acknowledged the complainants' request. It is further found that the respondents informed the complainants that, once the records were compiled, the Office of the City Attorney would contact them and inform them of the cost of the records, and arrange a time when the

complainants could pick up the records.

4. It is found that, by letter dated January 13, 2012, the complainants, along with CAIR, renewed the January 6, 2012 request, as set forth in paragraph 2, above.

5. It is found that, by letter dated January 20, 2012, the respondents again acknowledged the request. It is further found that, in this correspondence, the respondents informed the complainant that they were still in the process of determining what documents exist within the BPD which would be responsive to the request. It is found that the respondents also informed the complainant that, pursuant to the Freedom of Information ("FOI") Act, they were only required to produce non-exempt records, and were not required to answer questions. It is further found that the respondents informed the complainants that they would contact them once they had additional information to report.

6. It is found that, by letter dated February 17, 2012, the complainants, along with CAIR, again renewed the January 6, 2012 request, as set forth in paragraph 2, above. It is further found that, at this time, the complainants informed the respondents 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.

7. By letter dated March 2, 2012 and filed March 5, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying their request for information and copies of the records described in paragraph 2, above.

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. (Emphasis supplied).

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, by letter dated March 13, 2012, the respondents informed the complainants that, because the FOI Act does not obligate them to answer questions, no responses would be made to the complainants’ inquiries, set forth above in paragraph 2, above. (See ¶ 2, Inquiries a-f).

12. It is further found that, in the March 13, 2012 correspondence, the respondents made some observations about the request for records set forth in paragraph 2, above. (See ¶ 2, Records Requests a-e). It is found that the respondents generally informed the complainants that, while they had yet to determine whether they maintained any records responsive to the request, any records concerning “open and pending cases” would be exempt pursuant to §1-210(b)(3), G.S. They further stated that, in the event documents exist, they may be obligated to seek a determination from the Commissioner of Emergency Management and Homeland Security about whether the disclosure of the documents could pose a safety risk, pursuant to §1-210(b)(19), G.S. They also stated that all responsive records would be reviewed “for any exemptions and any non-exempt material would be provided.” With regard to the requests themselves, it is found that the respondents also specifically observed the following:

- a. with regard to the first request for records (¶ 2.a, above), the respondents assumed that this request was limited to correspondence addressing the topic of “counter-terrorism surveillance in Bridgeport, CT” and their response would be made in accordance with such assumption;
- b. with regard to the second request for records (¶ 2.b, above), the respondents stated that memorandums of understanding or other such documents were exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.;
- c. with regard to the third request for records (¶ 2.c, above), the respondents stated that documents relating to BPD’s investigation or surveillance initiatives “may” be exempt from disclosure pursuant to §1-210(b)(3), G.S.;
- d. with regard to the fourth request for records (¶ 2.d, above), the respondents stated it was their assumption that the complainants were requesting written policies governing joint investigations as such policies pertained to “counter-terrorism in Bridgeport, CT,” (as opposed to, for example, joint investigations on automobile theft), and that, the if the complainants did not contact the

respondents to correct this assumption, records would be provided in accordance with such assumption; and

- e. with regard to the fifth request for records (§ 2.e, above) the respondents stated that any reports or documents evidencing BPD's awareness of the presence of NYPD officers engaging in surveillance or investigative activities of Muslims "may" be exempt from disclosure pursuant to §1-210(b)(3), G.S.

13. It is found that, by letter dated April 18, 2012, the complainants responded to the respondents' March 13, 2012 correspondence, indicating, inter alia, that they did not believe that the requested records were exempt. It is further found that the complainants reminded the respondents that they received the request in this case on January 7, 2012 and that they had failed to produce copies of public records promptly as required by the FOI Act.

14. It is found that, by letter dated May 31, 2012, the complainants agreed to limit the requests for records in paragraphs 2.a and 2.b, above, by adding the following clause to the end of their first two requests: "relating to investigation or surveillance of Muslim communities." (See § 2, above, Records Requests a-b).

15. It is found that, by letter dated August 28, 2012, the respondents informed the complainants that they had no records responsive to the request.

16. With respect to the inquiries listed in paragraph 2, above, nothing in the FOI Act requires a public agency to answer questions, and, therefore, it is therefore concluded that the respondents did not violate the FOI Act by refusing to provide answers to the six questions posed by the complainants.

17. With respect to the requests for records in paragraph 2, above, as an initial matter, it is found that the purpose of the complainants' request was to determine whether or not Connecticut residents and students were being surveilled because they were Muslim, or were associated with Muslim groups. It is further found that, while they were not obligated to do so, the complainants clearly articulated this 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 Bridgeport, Ct and if so, whether it was done with the cooperation or consent with the . . . BPD." (See Ex. A, § 2); see also Chief of Police, Hartford Police Dep't v FOIC, 252 Conn 377, 387 (2000) (stating that "whether records are disclosable under the act does not depend in any way on the status or motive of the applicant . . .").

18. It is found that, based on the background information provided in the request for records, there could be no doubt that the complainants were only seeking records that concerned NYPD surveillance activities in Bridgeport, Connecticut, which activities occurred with the consent or assistance of the BPD, or of which activities the BPD had knowledge.

19. It is found that, after having received the request in this case, it took the respondents 235 days—that is, seven months and twenty-three days—to inform the complainants that they did not have any responsive records.

20. The respondents contend that their delay was due to the fact that the scope of the request was not clear to them until they received the complainants' May 31, 2012 correspondence, limiting the request for records. (See ¶ 14, above). The respondents further contend that without the May 31, 2012 modification they were unable to discern whether the complainants sought records pertaining to NYPD surveillance activities, and NYDP and BDP joint surveillance activities of Muslims in Bridgeport, or whether the complainants were requesting records about concerning “joint investigations on matters such as automobile theft, gang related activities and similar issues with other law enforcement agencies.” (See Ex. G).

21. It is found that, not only is it unreasonable to read the request as one seeking records of surveillance activities unconnected to Muslims, (see ¶ 17, above), but the respondents had already imposed their own limitations on the request. (See ¶¶ 12.a, and 12.d, above; see also Ex. G, ¶ 1, “It is assumed that any correspondence sought addresses the topic of ‘counter-terrorism surveillance in Bridgeport, CT’ and our responses will be made pursuant to that interpretation,” Ex. G, ¶ 4, “It is assumed that this request does not encompass any such law enforcement efforts but instead is limited to joint investigations related to ‘counter-terrorism surveillance in Bridgeport, CT’”. To the extent that you do not intend to so limit this request, please notify the undersigned, or the assumption will be that your request is so limited.”). It is further found that the respondents' limitations were self-effectuating, thereby rendering the complainants' confirmation of and agreement to them unnecessary.

22. Finally, with regard to the search for records in this case, as an initial matter, it is found that, if the respondents maintained records responsive to the request, such records would be located within the respondents' Detective Bureau, which forms part of the respondents' Investigative Services Division, or within the Office of the Chief of Police.

23. It is found that Mr. Adam Radzimirski, the Deputy Chief in Charge of Investigations and Uniform Service, searched for records responsive to the request. It is found that Deputy Chief Radzimirski searched through an electronic “casebook” database, which stores information on all investigations occurring within the City of Bridgeport. It is further found that Deputy Chief Radzimirski searched through hard copy files of investigations occurring within the City of Bridgeport. It is found that the City of Bridgeport conducts approximately 1,600 investigations annually. It is found that Deputy Chief Radzimirski spent approximately five hours searching for records in this case. It is found that Deputy Chief Radzimirski did not locate any records that evidenced coordinated surveillance activities between the BPD and the NYPD, or any records that evidenced independent surveillance activities on the part of the BPD or the NYPD, pertaining to Muslims or Muslim communities.

24. In addition, it is found that Captain James Viadero of the respondents' Detective Bureau conducted an independent search for records that evidenced joint or independent surveillance activities. It is found that Captain Viadero also searched the

electronic "casebook" database and hard copy files of investigations. It is found that Captain Viadero did not locate any records responsive to the request.

25. In addition, it is found that Deputy Chief Anthony Armeno, who is in charge of the Narcotics Unit within the Investigative Services Unit, also conducted a search for responsive records. It is found that Deputy Chief Armeno informed Deputy Chief Radzimirski that he did not locate any records responsive to the request.

26. It is further found that a search was undertaken for responsive records in Police Chief Joseph Gaudett's office. It is found that all incoming and outgoing correspondence was searched for responsive records. It is found that this search was conducted by the chief's administrative assistant, under the supervision of Deputy Chief Radzimirski. It is found that it took the chief's administrative assistant approximately one hour to complete her search. It is found that this search did not locate any records responsive to the request.

27. Based on the findings in paragraphs 23 through 26, above, it is concluded that the respondents conducted a thorough search for records in this case.

28. Based on the findings in paragraphs 17, 18, 19 and 21, it is concluded that the respondents violated the promptness requirement of the FOI Act by failing to commence their search for responsive records in a timely manner, thereby requiring almost eight months to determine that they did not maintain records responsive to the request.

29. Finally, in their brief, the complainants requested that the Commission impose a \$1,000.00 civil penalty against the respondent chief, as well as require the staff of the Bridgeport Police Department, including the city attorney, to undergo FOI training. Based on the evidence adduced at the contested case hearing, the Commission declines to impose civil penalties in this case.

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 the FOI Act.



Valicia Dee Harmon  
as Hearing Officer