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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Edward Peruta and the American News and
Information Service,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-450

Rueben Bradford, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection, Division of
Public Safety; Kenneth Zercie, Richard
Alexandre, and William Podgorski, State of
Connecticut, Department of Emergency
Services and Public Protection, Division of
Scientific Services; and Dawn Hellier, Seth
Mancini and Thomas Hatfield, State of
Connecticut, Department of Emergency
Services and Public Protection, Division of
Public Safety, Legal Affairs Unit,
Respondent(s)

May 31, 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, June 27, 2012**. 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 June 15, 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 June 15, 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 June 15, 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.**

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By Order of the Freedom of
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: Edward Peruta
Terrence M> O'Neill, AAG

5/31/2012/FIC# 2011-450/Trans/wrbp/LFS//KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Edward Peruta and the American News
and Information Services,

Complainant

against

Docket #FIC 2011-450

Rueben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of Public Safety; Kenneth Zercie, Richard Alexandre, and William Podgorski, State of Connecticut, Department of Emergency Services and Public Protection, Division of Scientific Services; and Dawn Hellier, Seth Mancini and Thomas Hatfield, State of Connecticut, Department of Emergency Services and Public Protection, Division of Public Safety, Legal Affairs Unit,

Respondents

May 30, 2012

The above-captioned matter was heard as a contested case on May 11, 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 on August 29, 2011, the complainants sent an e-mail to the respondents Mancini, Hellier, and Hatfield, in which they requested:

[a.] Access to any and all Freedom of Information requests made since January 1, 2011 by others regarding the Connecticut State Police Crime Laboratory.

[b.] Access to any Freedom of Information Requests or department responses regarding the crime lab since July 21, 2011.

[c.] Access to any and all employee time records for Crime Lab personnel which document periods where employees have unscheduled **taken time off** from their regular work schedule. This request includes any time off taken for other than regularly scheduled days off, and sick days, such as but not limited to Comp. time.

[d.] Access to any and all records of, or approvals for, Crime Lab personnel working outside of their normal assigned duties with the state of Connecticut.

[e.] Any records, (redacted where necessary), of investigations into misconduct by members of the Crime Lab.

[f.] Access to any and all correspondence, (sent or received), between any member of the department and the office of Governor Dannel P. Malloy, Mr. Michael Lawlor, or their staff regarding the newly created 17 member panel appointed by Gov. Malloy to investigate or review the Connecticut State Police Crime lab issues. This request includes any **guidelines or meeting schedules** for the panel.

[g.] Access to any and all records which address or reference the need or possible need to re-test DNA samples during any period since January 1, 2011.

[h.] Access to any and all records which address any inability to submit DNA results to the national CODIS database.

[i.] Access to any information regarding **NON CRIMINAL** investigations of persons assigned to the Connecticut State Police Crime Lab.

[j.] Access to any and all correspondence sent to or received from Major William R. Podgorski Supervisor of the Connecticut State Police Crime Laboratory or Kenneth Zercie, Director Division of Scientific Services regarding DNA since January 1, 2011.

(Emphasis in original.)

3. It is found that the complainants also requested a meeting with the respondents “to properly identify specific records.”

4. It is found that on August 30, 2011, without informing the respondents in advance, the complainant Peruta appeared at the respondents’ offices in order to discuss his request and

to inspect the records he requested the previous day, although the respondents had not yet replied to his e-mail.

5. It is found that on that day, August 30, 2011, when Peruta went to the respondents' offices in order to meet and discuss his FOI requests, all sworn personnel of the respondent Department of Emergency Services and Public Protection had been mobilized to provide assistance with clean-up and maintaining order in the aftermath of Hurricane Irene.

6. It is found that no one in the Legal Affairs Unit was available to meet with the complainant Peruta and he was unable to inspect the records he requested, described in paragraph 2, above, on August 30, 2011. It is found that a secretary for the respondents suggested that Peruta return the next day to speak with the respondent Mancini.

7. By e-mail correspondence filed August 30, 2011, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide prompt access to the records they requested on August 29, 2011. The complainants requested the imposition of a civil penalty.

8. In their appeal, the complainants stated that "[t]he sole issue of this complaint is the repeated failure to provide anyone to accept and/or respond to verbal and written requests for PROMPT ACCESS to public records... The failure to have personnel available to accept, discuss or respond to FOI requests is an immediate denial of the right to PROMPT ACCESS TO PUBLIC RECORDS." (Emphasis in original.)

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, ...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 (1) inspect such records promptly during regular office or business hours...

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 requested by the complainants are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

13. It is found that on August 31, 2011, at 5:42 p.m., the respondent Mancini replied via e-mail to the complainant's August 29, 2011 e-mail request. It is found that Mancini acknowledged the complainants' request, denied their request for a meeting, and informed them that he could make records available to the complainants on a "piecemeal basis" as they are located and reviewed for disclosure. It is found that Mancini also invited Peruta to continue to communicate by e-mail and telephone.

14. It is found that, contrary to the complainants' assertion, Mancini's e-mail to Peruta on August 31, 2011 demonstrated that the respondents accepted and responded to the complainants' request for prompt access to records.

15. Moreover, it is found that on September 7, 2011, the respondents provided the first installment of the records requested by the complainants, with additional records available for the complainants' inspection shortly thereafter.


16. It is found that, despite their demand for almost immediate access, the complainants have not yet inspected any of the records.

17. It is found that the respondents acknowledged the complainants' request in a timely manner, promptly provided the records for inspection, and never denied the complainants' request.

18. It is found that the respondents did not violate the FOI Act as alleged by the complainants.

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

1. The complaint is hereby dismissed.


Lisa Fein Siegel
as Hearing Officer