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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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Lamberto Lucarelli,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2011-592

Chief, Police Department, Town of Old Saybrook; and Police Department, Town of Old Saybrook,

Respondent(s)

July 5, 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, July 25, 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 July 13, 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 July 13, 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 July 13, 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: Lamberto Lucarelli
Michael E. Cronin, Jr., Esq.

7/5/12/FIC# 2011-592/Trans/wrbp/LFS//TAH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Lamberto Lucarelli,

Complainant

against

Docket #FIC 2011-592

Chief, Police Department, Town of Old
Saybrook; and Police Department, Town
of Old Saybrook,

Respondents

July², 2012

The above-captioned matter was heard as a contested case on March 13, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2011-653; Lamberto Lucarelli v. Chief, Police Department, Town of Old Saybrook; and Police Department, Town of Old Saybrook.

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 October 11, 2011, the complainant requested from the respondents a copy of an incident report and asked for a waiver of all copying fees because he is indigent.
3. It is found that the respondents informed the complainant that there was now an \$8.00 fee to request a copy of an Old Saybrook incident report, payable in advance.
4. It is found that the respondents did not provide the complainant with the record he requested, described in paragraph 2, above, on October 11, 2011.
5. It is found that on October 12, 2011, the complainant made a written request for the same incident report, and again asked for a waiver of all copying fees due to indigency.
6. By letter filed October 21, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide the records he requested, described in paragraph 2, above.
7. Section 1-200(5), G.S., defines "public records" as follows:

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.

8. 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 inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of section 1-212.

9. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

10. It is concluded that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

11. It is found that on November 2, 2011, the respondents provided the requested incident report to the complainant, free of charge.

12. The respondents acknowledged at the hearing in this matter that on January 1, 2011, they implemented an \$8.00 search fee for each copy of an incident report requested. For support of this policy, they cite §29-10b, G.S., which provides:

The Commissioner of Public Safety shall charge the following fees for the item or service indicated:

(1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, six dollars, and on and after July 1, 1993, sixteen dollars.

(2) Each copy of an accident or investigative report, six dollars, and on and after July 1, 1993, sixteen dollars.

13. It is concluded that §29-10b, G.S., applies only to the Commissioner of Public Safety and does not authorize the respondents to charge search or copying fees in excess of what is permitted by the FOI Act.

14. It is found that despite their fee policy, the respondents provided the requested incident report to the complainant without charge. The respondent chief testified that the

respondents have provided more than 2000 pieces of paper to the complainant over the years and the chief never has charged the complainant and intends never to charge the complainant for any of the many records he requests.

15. It is concluded, based upon the facts of this case, whereby the respondents provided the complainant with the requested incident report without imposing any fees whatsoever, that the respondents did not violate the FOI Act with respect to the complainant's request.

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.

2. The Commission wishes to advise the respondents that §1-210(a), G.S., provides in relevant part: "Any agency rule or regulation, or part thereof, that ... curtails in any way the rights granted by [§1-210(a), G.S.] shall be void." The Commission further advises the respondents that §1-212(a), G.S., controls the fees that they may charge for copies of public record, not §29-10b, G.S.



Lisa Fein Siegel
as Hearing Officer