

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

David Godbout,  
Complainant(s)

against

Law Department, City of Stamford; City of Stamford; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondent(s)

Notice of Rescheduled  
Commission Meeting

Docket #FIC 2011-595

July 19, 2012

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, July 25, 2012 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, August 8, 2012.**

Any brief, memorandum of law or request for additional time, as referenced in the July 2, 2012 Transmittal of Proposed Final Decision, should be received by the Commission on or before July 27, 2012.

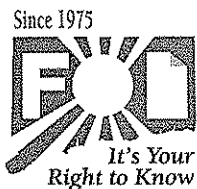
By Order of the Freedom of  
Information Commission

W. Paradis

Acting Clerk of the Commission

Notice to: David Godbout  
Burt Rosenberg, Esq. and Chris Dellaselva, Esq.  
Terrence M. O'Neill, AAG and Stephen R. Sarnoski, AAG

2012-07-19/FIC# 2011-595/ReschedTrans/wrbp/KKR//CAL



# FREEDOM OF INFORMATION



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David Godbout,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-595

Law Department, City of Stamford; City of  
Stamford; Commissioner, State of Connecticut,  
Department of Emergency Services and Public  
Protection; and State of Connecticut,  
Department of Emergency Services and Public  
Protection,

Respondent(s)

July 2, 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: David Godbout  
Burt Rosenberg, Esq., Christ Dellaselva, Esq.  
Terrence M. O'Neill, AAG and Stephen R. Sarnoski, AAG

2012-07-02/FIC# 2011-595/Trans/wrbp/KKR/CAL

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2011-595

Law Department, City of Stamford;  
City of Stamford; Commissioner,  
State of Connecticut, Department of  
Emergency Services and Public Protection;  
and State of Connecticut, Department of  
Emergency Services and Public Protection,

Respondents

June 29, 2012

The above-captioned matter was schedule to be heard as a contested case on February 14, 2011, at which time the complainant and the respondents Law Department and City of Stamford (municipal respondents) appeared. The municipal respondents moved to dismiss the case on the ground that they are not a proper party to this matter, citing §1-210(d), G.S. The hearing officer ordered the parties to brief the issue, and on March 8, 2012, the hearing officer issued a written memorandum denying the motion.

On March 9, 2012, the municipal respondents filed an Amended Motion to Dismiss/Request for Reconsideration of Ruling on Motion to Dismiss (the motion), and provided the Commission with a copy of a letter from the Commissioner of the State of Connecticut Department of Emergency Services and Public Protection (Commissioner), directing that certain of the information requested by the complainant from the municipal respondents not be disclosed by them. The hearing officer denied the motion; however, the Commissioner and the Department of Emergency Services and Public Protection (DESPP) were added as respondents in this matter, and the case caption was amended accordingly.<sup>1</sup> The matter was then heard as a contested case on April 24, and June 12, 2012, at which times the complainant and all respondents appeared and presented testimony, exhibits and argument on the complaint.

1. The respondents are public agencies, within the meaning of §1-200(1), G.S.

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<sup>1</sup> The complainant thereafter filed a motion to dismiss the Commissioner and DESPP as respondents, claiming they are not proper parties to this matter, and that this Commission lacks authority to add them, which motion was denied.

2. It is found that, by letter to the respondent law department dated September 21, 2011, the complainant requested to inspect:

(a) all documents, including inventory lists, invoices, and documents showing the city's ownership, related to the following items owned by the city:

(i) weapons such as handguns, rifles, tasers, grenades, projectile launchers and ammunition magazines;

(ii) chemical agents "and any other type of chemical, biological or nuclear weapon agent";

(iii) body armor and tactical vests;

(iv) vehicles over a gross weight of 7,000 pounds;

(v) vehicles under a gross weight of 6500 pounds (police vehicles only);

(vi) ammunition (all types for any type of weapon);

(vii) vehicles over a gross weight of 6500 pounds (police vehicles only).

In addition, the complainant requested to inspect:

(b) "any prior FOIA requests filed prior to this request from ... 1 JAN 05 through present that in any way relate to any of the items contained within this request. Excluding any requests made by David Godbout or East Lyme, CT."

(c) "any and all documents relating to the city's completion of this FOIA request. Documents regarding communications between parties (city & non-city person(s)) produced from the date of receivership of this request to the completion of the FOIA request by the city."

(d) "any document relating to the city's policies concerning the restriction or city's attempts to limit of [sic] the physical viewing of the public of any of the items ... of this request. This may include but are not exclusive to any document regarding the policies of the police department to 'hide' any firearm or other item requested herein from the public's eyes."

(e) “any document showing who or what city agencies or departments maintains [sic] the records noted in this request.”

(f) “any document showing the cost of producing copies under a FOIA request and any documents showing an analysis of the cost determination(s).”

3. It is found that on October 20, 2011, the complainant renewed the request, described in paragraph 2, above.

4. It is found that, by email dated October 21, 2011, the complainant was informed by Assistant Corporation Counsel Burt Rosenberg, that he had discussed the request, described in paragraph 2, above, with Chief of Police Robert Nivakoff, and that “after reviewing [the] request, Chief Nivakoff has reasonable grounds to believe that disclosure of the requested documents poses a safety risk to the Stamford Police Department as well as to the community. Therefore, the City is denying [the] request.”

5. By letter of complaint, dated October 22, 2011 and filed October 24, 2011, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2, above.

6. 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.

7. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

8. 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.”

9. It is found that the records described in paragraph 2, above, to the extent that they are maintained by the municipal respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. Section 1-210(b)(19), G.S., provides that “[n]othing in the Freedom of Information Act shall be construed to require disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined (A) (i) by the Commissioner of Administrative Services, after consultation with the chief executive officer of an executive branch state agency, with respect to records concerning such agency; and (ii) by the Commissioner of Emergency Services and Public Protection, after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency; (B) by the Chief Court Administrator with respect to records concerning the Judicial Department; and (C) by the executive director of the Joint Committee on Legislative Management, with respect to records concerning the Legislative Department. As used in this section, “government-owned or leased institution or facility” includes, but is not limited to, an institution or facility owned or leased by a public service company, as defined in section 16-1, a certified telecommunications provider, as defined in section 16-1, a water company, as defined in section 25-32a, or a municipal utility that furnishes electric, gas or water service, but does not include an institution or facility owned or leased by the federal government, and “chief executive officer” includes, but is not limited to, an agency head, department head, executive director or chief executive officer.

11. Section 1-210(d), G.S., provides:

Whenever a public agency, except the Judicial Department or Legislative Department, receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Administrative Services or the Commissioner of Emergency Services and Public Protection, as applicable, of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act and for information related to a water company, as defined in section 25-32a, the public agency shall promptly notify the water company before complying with the request as required by the Freedom of Information Act. If the commissioner, after consultation with the chief executive officer of the applicable agency or after consultation with the chief executive officer of the applicable water company for information related to a water company, as defined in section 25-32a, believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. In any appeal brought under the provisions of section 1-206 of the Freedom of Information Act for denial of access to records for any of the reasons described in subdivision (19) of subsection (b) of this section, such appeal shall be against the chief executive officer of the executive branch state agency or the municipal, district or regional agency that issued the directive to withhold such record pursuant to subdivision (19) of subsection (b) of this section, exclusively, or, in the case of records concerning Judicial Department facilities, the Chief Court Administrator or, in the case of records concerning the Legislative Department, the executive director of the Joint Committee on Legislative Management. [Emphasis added].

12. It is found that, by letter dated December 16, 2011, the municipal respondents requested that the state Department of Construction Services (DCS) conduct a review of the requested records, pursuant to §1-210(b)(19), G.S., to determine whether there are reasonable grounds to believe their disclosure may result in a safety risk. It is found that by letter dated January 6, 2012, the DCS legal director informed the municipal respondents that DCS is not responsible for conducting such reviews for municipal agencies, but that the request would be forwarded to DESPP.

13. It is found that, by letter dated January 6, 2012, the DCS legal director forwarded the municipal respondents' request, described in paragraph 12, above, to

DESPP, and that, by the time the Commissioner received such request, the Commissioner had already met with legal and law enforcement officials from the cities of Hartford and Norwich, as well as a Connecticut State Police sergeant and attorneys from DESPP, to conduct safety reviews requested by those cities, pursuant to §1-210(b)(19), G.S. It is further found that these reviews were prompted by records requests made by the complainant to Hartford and Norwich that were identical to the request made to the municipal respondents.

14. It is found that the Commissioner sent letters regarding his safety review to the cities of Hartford and Norwich on February 27, 2012.

15. It is found that, on February 29, 2012, counsel to the Commissioner emailed Attorney Rosenberg and explained that, although the Commissioner would normally meet with officials from Stamford to discuss their requested review, under the circumstances, described in paragraph 13, above, she would recommend to the Commissioner that he issue the same letter to the municipal respondents that he issued to Hartford and Norwich. It is found that Attorney Rosenberg and the Commissioner agreed with this recommendation.

16. It is found that, by letter dated March 6, 2012, the Commissioner acknowledged the municipal respondents' request for review of the requested records and noted that "identical FOI requests" had been received by the cities of Hartford and Norwich, which cities also had requested that a review pursuant to §1-210(b)(19), G.S., be undertaken (the March 6<sup>th</sup> letter).

17. It is found that, in the March 6<sup>th</sup> letter, the Commissioner stated that he has reasonable grounds to believe that the release of some of the requested records may result in a safety risk. It is found that the March 6<sup>th</sup> letter addressed only the records described in paragraphs 2(a)(i) through (vii), above.

18. With regard to the request described in paragraph 2(a)(i), above, the Commissioner stated, in the March 6<sup>th</sup> letter, and it is found, that "the disclosure of information with regard to the type and number of specialized weapons that are intended to subdue certain people in order to protect other members of the public, would allow those who may plan violent actions against the City and its residents to calculate how to defend against the City's protective measures, and/or the amount of force that would be necessary to overcome these protective measures."

19. Specifically, the Commissioner concluded, and it is found, that "[i]nformation regarding the type and number of grenades, projectile launchers, rifles, electronic subduing devices, and other specialized weapons that are not publicly displayed, should not be disclosed. This information may cause a safety risk for the reasons outlined above." However, the Commissioner further concluded, and it is found, that "disclosure of the type and number of handguns and tasers, which are carried by law enforcement officers in a public manner, is appropriate."



20. At the hearing in this matter, the complainant argued that the Commissioner's conclusion regarding a safety risk is erroneous because it is not true that law enforcement officers do not ever, publicly display weapons such as rifles. Through cross examination of the respondents' witness, the complainant demonstrated that Stamford police officers occasionally display weapons such as rifles, in parades or in shooting demonstrations.

21. It is found that Stamford police officers, as part of their uniforms, generally carry a handgun and a taser, which are visible, but, as part of their uniforms, do not carry weapons such as grenades, projectile launchers and rifles.

22. It is found that the complainant offered no evidence to counter the Commissioner's conclusion that he has reasonable belief that disclosure of the requested records may result in a safety risk to any person.<sup>2</sup>

23. Based upon the foregoing, it is concluded that the Commissioner and DESPP did not violate the FOI Act when they directed the municipal respondents to withhold records responsive to the request described in paragraph 2(a)(i), above, pertaining to grenades, projectile launchers, rifles, electronic subduing devices, and other specialized weapons.

24. With regard to the remainder of the records, described in paragraph 2(a)(i), above, it is found that, by email dated April 11, 2012, the municipal respondents provided the complainant with the following information:

274 Smith & Wesson M & P .45 caliber handguns  
120 TASER brand tasers, model X26

25. At the April 24<sup>th</sup> hearing in this matter, the complainant stated that he was dissatisfied with the response to the request, described in paragraph 24, above, claiming that the municipal respondents also should have provided him with the associated invoices, inventory lists and other documents associated with the handguns and tasers, as he requested. According to the complainant, the March 6<sup>th</sup> letter from the Commissioner directs the municipal respondents to provide him with such records.

26. It is found that the municipal respondents initially interpreted the March 6<sup>th</sup> letter as directing them to withhold all records, but permitting them to provide a statement of the type and number of the handguns and tasers, as described in paragraph 24, above. However, at the June 12<sup>th</sup> hearing in this matter, the municipal respondents stated that they were willing to provide the complainant with copies of such records and had requested them from the "range" officer.

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<sup>2</sup> The complainant attempted to qualify himself as an expert in the area of "risk assessment" for the purpose of challenging the Commissioner's conclusion. The hearing officer decline to qualify the complainant as such.

27. At the April 24<sup>th</sup> hearing in this matter, the complainant stated that he wished to withdraw his complaint insofar as it alleges a violation of the Act based on the denial of the requests, described in paragraphs 2 (a)(ii), (iii), (vi), (v), (vi), and (vii), above. Accordingly, the Commission shall not further consider such allegations herein.

28. With regard to the request, described in paragraphs 2(b) through (f), above, it is found that, by email dated June 8, 2012, the municipal respondents provided the complainant with certain responsive records and informed the complainant that certain other records he requested did not exist.

29. Based upon such response and the testimony at the hearing, it is found that no records exist in response to the request described in paragraphs 2(b) and (f), above; the respondents provided the complainant with all records responsive to the request described in paragraphs 2(d) and (e), above; and the response to the request described in paragraph 2(c), above, is identical to the response to the request described in paragraphs 2(a)(i) and 26, above.

30. At the June 12<sup>th</sup> hearing in this matter, the complainant argued that the municipal respondents' response to his request, described in paragraph 2, above, was not prompt.

31. With regard to the response to the request described in paragraphs 2(d) through (e), above, it is found that such response, some eight months after the second request for such records was made, was not prompt. Although the municipal respondents argued that the delay was due to the security review process, it is found that the records at issue were not part of such security review and could and should have been provided to the complainant promptly.

32. Accordingly, with regard to the records described in paragraph 31, above, it is found that the municipal respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

33. With regard to the claim that the response to the request described in paragraph 2(a)(i), above, was not prompt, it is concluded, based upon the findings in paragraphs 4 and 12, above, that the municipal respondents violated §1-210(d), G.S., by failing to promptly notify the Commissioner when they received the request, described in paragraph 2, above.

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 the records, described in paragraph 26, above, free of charge.
2. Henceforth, the municipal respondents shall strictly comply with the promptness provisions of §§1-210(a), 1-210(d), and 1-212(a), G.S.

3. The complaint against the Commissioner of DESPP and DESPP is dismissed.

A handwritten signature in black ink, appearing to read "Kathleen K. Ross", written over a horizontal line.

Kathleen K. Ross  
as Hearing Officer

FIC 2011-595/hor/kkr/06292012