Since 1975
FREEDOM OF INFORMATION
It's Your Right to Know
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

James Torlai,
Complainant(s)
against

Legal Affairs Unit, 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 Meeting

Docket #FIC 2011-700

September 4, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Thursday, September 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 September 14, 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 September 14, 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 September 14, 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: James Torlai
Terrence M. O'Neill, AAG

2012-09-04/FIC# 2011-700/Trans/wrbp/TCB//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by — Report of Hearing Officer

James Torlai,

Complainant

against — Docket #FIC 2011-700

Legal Affairs Unit, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondents — August 27, 2012

The above-captioned matter was heard as a contested case on June 6 and 20, 2012 at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC 2012-040; James Torlai v. State of Connecticut, Department of Emergency Services and Public Protection, Division of Scientific Services.

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 November 28, 2011 to the respondents, the complainant made a request for a copy of "records related to all DUI arrests made by the State Police Troop L in Bantam ...[between] October 1, 2010 and November 28, 2011." The complainant specifically requested that he be provided with a copy of the "Criminal Information Summary" for each arrest which may have also been referred to as a "news release." The complainant further stated that in the event a "Criminal Information Summary" was not available, he requested to be provided with: the name and address of the person arrested; the date, time and place of the arrest; a list of all charges; and a narrative report of the arrest.

3. By letter dated December 21, 2011 and filed on December 22, 2011, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly comply with his November 28, 2011 records request.

4. 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.

5. 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 . . . receive a copy of such records in accordance with section 1-212.

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

7. It is found that the requested record is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. It is found that by letter dated December 28, 2011, the respondents provided the complainant with a copy of records purporting to be responsive to his request and with a request that he remit the $2.00 fee for the 8 pages that were provided.

9. It is found that, while the complainant remitted the fee for the records that were provided, he was not satisfied and informed the respondents by letter dated December 31, 2011, that the records were not responsive to his request.

10. It is found that by letter dated March 16, 2012, the respondents informed the complainant that 180 pages of records responsive to his request were available and asked that he remit the $45.00 fee for the copies. It is found that the records were provided to the complainant by a letter dated April 2, 2012.

11. At the hearing in this matter, and in his brief, the complainant contended that the respondents had not fully complied with his request because they withheld the arrest records of approximately 73 people stating that those records had been erased pursuant to §54-142a(a), G.S., when in fact many had not. The complainant contended that because the respondents insist on using solely the database accessible through the Judicial Branch's website to determine if requested arrest records have been erased, they have withheld records that should have been provided to him. He also contended that there are other sources available to the respondents that could be used in addition to the database on the Judicial Branch website to assist the respondents in accurately determining which arrest records have been erased. The complainant contended that the respondents' reliance on solely the database on the Judicial Branch website is insufficient considering the site has a disclaimer which states that not all conviction information is displayed and states specifically that infraction and violation convictions are not displayed.

12. The respondents contended at the hearing, and in their brief, that the public is restricted from obtaining information from law enforcement databases, and that they do not have an obligation to find information that is not initially found and would require searching records outside of their agency.

13. Section 1-215, G.S., provides in relevant part that:

> (a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.
>
> (b) For the purposes of this section, "record of the arrest" means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

14. In addition, §54-142a, G.S., provides that:

> (c) (1) Whenever any charge in a criminal case has been nolled in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolles entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased.
>
> (2) Whenever any charge in a criminal case has been continued at the request of the prosecuting attorney, and a period of thirteen months has elapsed since the granting of such continuance during which period there has been no prosecution or other disposition of the matter, the charge shall be construed to have been nolled as of the date of termination of such thirteen-month period and such erasure may thereafter be effected or a petition filed therefor, as the case may be, as provided in this subsection for nolled cases.
>
> ...
>
> (e) (1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such

> records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain.

15. It is found that the respondents are simultaneously required to comply with §§1-215, G.S., and 54-142a (e)(1), G.S. – meaning they are statutorily required to provide all non-exempt records responsive to the complainant's request, and also ensure that erased records are not inadvertently disseminated.

16. It is found that the respondents are aware that the Judicial Branch's website is not reliable. They concede in their brief that searching through the Judicial Branch's website "can produce inaccuracies in the records."

17. It is found that one of the other databases accessible by the respondents is the Connecticut On-Line Enforcement Communications Teleprocessing (COLLECT) system, which is an internal law enforcement system used by law enforcement and criminal justice agencies that allows its users to access accurate criminal history information.

18. It is found that the COLLECT system also allows access to the National Crime Information Center (NCIC) and the International Justice and Public Safety Information Sharing Network (NLETS), two national database systems. However, there is no evidence in the record that the records requested by the complainant would require access to either of these systems.

19. It is found that another database accessible by the respondents is the CR/MV system owned and operated by the Judicial Branch which the respondents have access to pursuant to a February 18, 1997 Memorandum of Agreement between the Judicial Branch and the Bureau of Information Management and Telecommunications of the Department of Public Safety (hereinafter "BIMT").

20. It is found that pursuant to the agreement, the respondents are "responsible for maintaining an up-to-date central repository of criminal history disposition information that criminal justice agencies can query prior to dissemination of information" and "that it is necessary [for the respondents] to access erased Judicial records periodically to make sure that [the respondents' records] are accurate."

21. It is found that pursuant to the February 18, 1997 Memorandum of Agreement the purpose of disclosure and use of the erased records data is to allow the respondents to perform its statutory duties including, but not limited to, maintaining an up-to-date repository of criminal history disposition information.

22. It is found that nothing in the February 18, 1997 Memorandum of Agreement precludes the respondents from using the CR/MV system owned and operated by the Judicial Branch, or its own repository of criminal history disposition information, to determine if the requested arrest records have been erased.

23. It is found that it is the responsibility of the respondents to meet all of their statutory obligations and to determine the manner by which they do so. It is found, therefore, that whether the respondents use the Connecticut On-Line Enforcement Communications Teleprocessing database, the Judicial Branch's erased records database, the central repository of criminal history disposition information maintained by the respondents' BIMT, or create and use some other database, it is in the respondents' discretion which database they use to ensure that all, but only, non-exempt/non-erased records are disclosed promptly at the time of a request.

24. The respondents cited in their brief Chief, Police Department, City of Hartford, et al. v. Freedom of Information Commission, et al., (CV 106005786S January 7, 2011) for the proposition that a public agency is not required to search into the accuracy of information provided in a database in its initial response to a records request. However, that case is distinguishable from the present case in that there was no evidence that the database the City of Hartford relied on had a disclaimer warning of its accuracy or that the City knew that the database "produced inaccuracies in the records."

25. Furthermore, it is found that the respondents' initial response was simply a letter acknowledging receipt of the complainant's request; that the records provided on December 28, 2011, were not responsive; and that it was not until March 16, 2012, that the complainant received any records there were actually responsive to his request.

26. Finally, it is found that the evidence in the record is that the database on the Judicial Branch's website used by the respondents does not provide accurate information on the erasure status of arrest records, that the respondent's know this, and therefore, the respondents' testimony that they have provided the complainant with all non-erased records responsive to his request is not credible.

27. Therefore, it is found that the respondents failed to fully and promptly comply with the complainant's request.

28. Consequently, it is concluded that the respondents violated §§1-210 and 1-212, G.S.

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

1. The respondents are hereby ordered to take all appropriate measures to ensure that the complainant is provided a copy of all non-exempt and non-erased records in response to his November 28, 2011 request, free of charge, within 10 days of the issuance of this decision.

2. The Commission leaves it to the discretion of the respondents to determine the appropriate method of determining whether records are or are not erased or exempt. However, the respondents shall not rely solely on the information available from the Judicial Branch website.

3. The respondents are further ordered to report to this Commission, in writing, whether there are now records subject to the erasure provisions of §54-142a, G.S., that were not subject to erasure at the time of the complainant's November 28, 2011 request.

Tracie C. Brown

Attorney Tracie C. Brown
as Hearing Officer

FIC2011-700/hor/tcb/20120817