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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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Fred Brow,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-012

Chief, Police Department, Town of East Haven;
and Police Department, Town of East Haven,
Respondent(s)

September 14, 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, October 10, 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 28, 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 28, 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 28, 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: Patricia A. Cofrancesco, Esq.
Joseph H. Zullo, Esq.

9/14/2012/FIC# 2012-012/Trans/wrbp/SDL/PSP/GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Fred Brow,

Complainant

Docket # FIC 2012-012

against

Chief,
Police Department,
Town of East Haven; and
Police Department,
Town of East Haven,

Respondents

September 12, 2012

The above-captioned matter was heard as a contested case on August 1, 2012, at which time the complainant and 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 December 20, 2011, the complainant made a request to the respondents for “[a]ny and all internal or external communications generated from members of the Department including you from the date of your return to the East Haven Police Department, to the date of this letter.”
3. It is found that upon receiving the complainant’s December 20th request, the respondent Chief forwarded the request to the Town of East Haven’s attorney for review. Subsequently, by letter dated December 27, 2011, the Town attorney, on behalf of the respondents, denied the complainant’s December 20th request on the grounds that it was overbroad, unduly burdensome, and would possibly involve the disclosure of exempt information and records pursuant to §§1-210(b)(3)(C), 1-210(b)(3)(D), 1-210(b)(4) and 1-210(b)(20), G.S. It is further found that the respondents informed the complainant that given the statutory four-day timeframe and the breadth of his request, it was impossible to review all communications to ensure that sensitive and/or privileged information was not improperly

disclosed. The respondents also informed the complainant that his request lacked sufficient particularity to make compliance possible at that time, and that the Town would be more than willing to re-assess a future request if it was not overbroad and burdensome and was made with sufficient particularity to allow the Town to reasonably comply.

4. By letter dated January 6, 2012, and filed January 9, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the requested records, described in paragraph 2, above.

5. Section 1-200(5), G.S., defines “public records or files” as:

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.

6. 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.

7. Section 1-212(a), G.S., provides in relevant part that “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

8. It is found 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.

9. The respondents maintain that the complainant’s request would require an unreasonably burdensome search and that the complainant’s failure to frame his response with sufficient particularity makes it difficult for the respondents to determine precisely what records are being requested. The respondents further claim that the complainant’s request would require research in that the respondents would be required to compile anything resembling a “communication” and then evaluate each piece of paper or electronic file to determine if it is, in fact, a communication. According to the respondents, such search and research would require significant time and resources.¹

¹ Notably, at the hearing and in their post-hearing brief, the respondents did not raise the §1-210(b), G.S., exemptions claimed in their December 27th letter, described in paragraph 3, above.

10. At the hearing, Captain Joseph Slane, the respondents' records room employee who is familiar with and oversees compliance with records requests, testified on behalf of the respondents. Captain Slane testified that, at the time of the complainant's request, the respondents were in the process of working on three very large and extensive records requests and that compliance with the complainant's request, which is also very large, would require significant time and manpower. Captain Slane testified that it would take two to three months to fulfill the complainant's request even working solely on such request. According to Captain Slane, if the complainant informed the respondents of exactly what he is seeking, the respondents' response to his request would be a lot easier and quicker.

11. Notwithstanding the respondents' contentions described in paragraphs 9 and 10, above, Captain Slane testified that he understood what type of records the complainant sought and the procedures involved in retrieving such records, including, but not limited to, reviewing emails stored in separate employee email accounts and listening to radio transmissions. In addition, Captain Slane testified that he became aware of the complainant's request only two to three weeks prior to the hearing in this matter, recalling a brief discussion with the respondents' attorney that the complainant had submitted a FOI request. According to Captain Slane, he had not seen the complainant's actual request until the day of the hearing.

12. It is found that the complainant's December 20th request was reasonably clear. It is further found that such request does not require research. See Wildin v. Freedom of Information Commission, 56 Conn. App. 683, 686-687 (2000)(Court found that the records request did not require the agency to do research where the complainant specifically identified the records he sought and there was no analysis required to search for the records; nor was the agency required to exercise discretion as to whether records fell within the records request).

13. It is found that at the time of the complainant's request there were 45 individuals employed in the respondent police department.

14. It is found that communications among members of the department and/or members of the public are maintained and conducted through email, written correspondence, phone messages, mobile text messages, inter-office memos, audio recordings (including, tape-recorded dispatches) and police reports, among others.

15. It is found that the complainant's request covered a specific three week period of time from November 30, 2011 to December 20, 2011.

16. It is found that the Town's attorney did not review any documents nor did he confer with the respondents' records room employee described in paragraphs 10 and 11, above, prior to denying the complainant's request as described in paragraph 3, above.

17. It is found that as of August 1, 2012, approximately seven and a half months after the complainant submitted his December 20th request, the respondents had yet to start working on such request.

18. It is found that the respondents failed to take any steps to retrieve records responsive to the complainant's request.

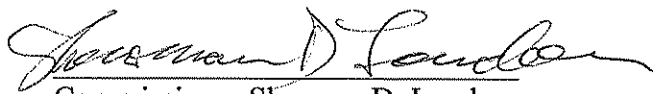
19. Based on the facts and circumstances of this case, it is found that the respondents failed to provide the complainant with records responsive to his request.

20. It is concluded, therefore, that the respondents violated the FOI Act as alleged in the complaint.

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

1. The respondents shall forthwith undertake a diligent search for the records described in paragraph 2 of the findings, above, and keep the complainant apprised of their progress. The respondents shall promptly provide copies of any responsive records to the complainant.

2. Henceforth, the respondents shall strictly comply with the disclosure requirements of §1-210(a), G.S.


Commissioner Sherman D. London
as Hearing Officer