



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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Thomas Marra,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2011-292

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

Respondent(s)

May 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, May 23, 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 May 11, 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 May 11, 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 May 11, 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: Thomas Marra  
Stephen R. Sarnoski, AAG

5/2/12/FIC# 2011-292/Trans/wrbp/VRP//TCB

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Thomas Marra,

Complainant

against

Docket #FIC 2011-292

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

Respondents

May 2, 2012

The above-captioned matter was heard as a contested case on February 27, 2012, and April 30, 2012<sup>1</sup>, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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. By letter of complaint filed June 26, 2011, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for public records.
3. It is found that the complainant made a request on May 19, 2011 to the respondents for copies of the records used relating to his prosecution.

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<sup>1</sup> Notwithstanding the issuance of this report on May 2, 2012, a hearing is scheduled for May 30, 2012 to monitor the respondents' progress in reviewing the documents requested by the complainant before their ultimate release to him.

4. It is found that the respondents did not provide any of the records, and informed the complainant that the records, variously estimated by the respondents to number 6,000 to 10,000 pages, would first need to be reviewed.

5. It is found, however, that the respondents had not reviewed any of the records from the time they received the request until the February 27, 2012 hearing on this matter, some nine months later. In the interim, they provided no records to the complainant.

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. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

...

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

9. At the February 27, 2012 hearing, the respondents represented through counsel that the records would need to be reviewed by them, by the Department of Correction (“DOC”) pursuant to §1-210(b)(18), G.S., and additionally by the Department of Administrative Services (“DAS”) pursuant to §1-210(b)(19), G.S.

10. Section 1-210(b)(18), G.S., provides in relevant part that nothing in the FOI Act shall require the disclosure of:

Records, the disclosure of which the Commissioner of Correction . . . has reasonable grounds to believe may result in a safety risk, including the risk of harm to any person or the risk of an escape from, or a disorder in, a correctional institution or facility under the supervision of the Department of Correction . . .

11. Section 1-210(b)(19), G.S., provides that nothing in the FOI Act requires the 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. Such records include, but are not limited to:

- (i) Security manuals or reports;

(ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;

(iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;

(iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;

(v) Internal security audits of government-owned or leased institutions or facilities;

(vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;

(vii) Logs or other documents that contain information on the movement or assignment of security personnel;

(viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and

(ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

12. In turn, §1-210(d), G.S., provides in relevant part:

Whenever a public agency ... 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 ... of such request, in the manner prescribed by such commissioner, 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 ... 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 ....

13. Although queried by the hearing officer, the respondents offered no convincing reason why the complainant's request was subject to review under §1-210(d), G.S.

14. At the February 27, 2012 hearing, the respondents, through counsel, represented that they saw no reason why review of the records by themselves, by DOC, and by DAS, could not be completed in 60 days. The respondents further represented that they expected that records not subject to statutory exemptions would be provided to the complainant within that 60-day time period. Therefore, at the request of the respondents, the hearing was continued for 60 days.

15. The complainant maintains that the respondents are "giving him the run-around," as they have repeatedly promised to provide non-exempt documents, but not followed through on any of those promises. The Commission understands this to be a claim that the records have not been provided promptly, and that that lack of promptness has been willful.

16. With respect to the general question of promptness, the meaning of the word "promptly" is a particularly fact-based question that has been previously addressed by the FOI Commission. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982) the Commission advised that the word "promptly" as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

17. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

18. It is found that the respondents offered no evidence or argument to explain why they did not commence any review of the documents requested by the complainant until nine months after his request.

19. It is also found that the respondents, through counsel, have also promised this Commission that certain actions, such as review of the documents by DOC, and the provisions of some documents to the complainant, would be accomplished in the 60 days following the first hearing on this matter, and that those promises have not been fulfilled.

20. The respondents assert that an individual previously employed as legal staff within the DPS departed the same day as the February 27, 2012 hearing in this matter, resulting in a staff shortage that contributed to the delay. The respondents also generally refer to the large volume of documents requiring review.

21. While these factors certainly would contribute to some delay in the respondents' review of the requested records, they do not justify complete inaction during the first nine months this complaint was pending. Nor do they justify the respondents' failure to submit any documents to the DOC for review during the 60 days following the February 27, 2012 hearing, as they had pledged to do at that hearing.

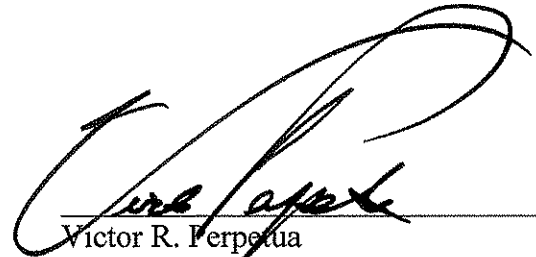
22. It is found that the respondents' review of the requested documents and provision of them to the was not prompt, and that the respondents therefore violated §1-210(a), G.S.

23. The Commission notes that due to the respondents' delay in commencing review of the records in this case, and their delay in forwarding any non-exempt records to the DOC, the Commission's statutory deadline for deciding this case pursuant to §1-206(b)(1), G.S., will expire before it has had any opportunity to review the completeness

of the documents provided to the complainant, or the applicability of any as yet to be claimed exemptions. The Commission therefore will grant expedited status to any future complaint by the complainant in this matter that alleges a denial of a new or repeated request for the same records.

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 forward to DOC all documents they do not intend to withhold from the complainant.
2. The respondents shall forthwith continue their review of the requested records, and forward any newly reviewed records to the DOC that the respondents do not intend to withhold from the complainant.
3. The respondents shall forward such newly reviewed records to the DOC on an ongoing basis. The Commission suggests that bundles of 100 pages would constitute an ongoing basis.
4. Henceforth the respondents shall strictly comply with the promptness requirements of §1-210(a), G.S.



Victor R. Perpetua  
as Hearing Officer