FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

William Freeman,

Complainant

against Docket #FIC 2016-0706

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

Respondents August 23, 2017

The above-captioned matter was heard as a contested case on January 23, 2017, at which time the complainant and the 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. By letter of complaint filed October 11, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide copies of public records.

3. It is found that, the complainant made a September 8, *2015* request to the respondents for copies of:

> … documentation/copy of emails sent by Lt. Scott Smith #55 (scott.smith@ct.gov), the acting Troop D commander, involving Trooper William Freeman #1253 to Employee Assistance Program (EAP) Phyllis Pavlik Spallone.
>
> This email was sent on or about mid-August 2013. I request it with its replies and to include ALL versions and

> ALL CC'd narratives regarding the following case numbers and IA associated with it. (CFS#1300494199 and CFS#1300499157) and/or reference to Internal Affairs Investigations number (IA#13-074).

4. It is found that, the complainant made a September 9, *2015* request to the respondents for copies of:

> … all documentation of all Use of Force investigation incidents involving Trooper William Freeman #1253 to include ALL LEAS versions for report narratives under the case numbers associated with these investigations from November 1, 2014 to January 1, 2015. Also any Injury to Prisoner case numbers associated to said Trooper with all LEAS versions.

5. It is found that, the complainant made a September 11, *2015* request to the respondents for copies of:

> … all documentation/copy of emails sent by Lt. Clifford Labbe #55 (Clifford.labbe@ct.gov), the acting Troop C commander, involving Trooper William Freeman #1253 to Sgt. Heath Ericson #231 (heath.ericson@ct.gov) and Lt. Scott Smith, the acting Troop D commander (scott.smith@ct.gov) and Major Michael Darcy, the acting Eastern District Commander (Michael.darcy@ct.gov). If the listed emails have changed/altered, please follow through based on the information supplied.
>
> These emails began on or about August 5, 2013 to March 30, 2014. I request it with its replies and to include ALL versions and ALL CC'd narratives regarding the following case numbers and IA associated with it. (CFS#1300494199 and CFS#1300499157) and/or reference to Internal Affairs Investigations number (IA#13-074).

6. It is found that, the complainant made a second September 11, *2015* request to the respondents for copies of:

> … all documentation/copy of emails sent/received by Major Michael Darcy, the acting Eastern District Commander (Michael.darcy@ct.gov), involving Trooper William Freeman #1253 to Sgt. Eric Costa #156 (eric.costa@ct.gov) and Lt. Timothy Madden, the acting Troop D commander (timothy.madden@ct.gov) and Sgt. Kevin Gridley #251 (kevin.gridley@dct.gov) and TFC Jeffrey Meninno #1361 (Jeffrey.meninno@ct.gov or

> Jam136@hotmail.com) and Sgt. Andrew Matthews (Andrew.matthews@ct.gov). If the listed emails have changed/altered, please follow through based on the information supplied.
>
> These emails began on or about November 15, 2014 to September 15, 2015. I request it with its replies and to include ALL versions and ALL CC's narratives regarding CFS #1400749330) and/or reference to Internal Affairs Investigations (IA) number (IA #15-043 and 15-018).

7. It is found that, the respondents offered or provided to the complainant documents responsive to the four 2015 requests beginning on November 19, 2015 and continuing to February 11, 2016.

8. It is found that, the respondents closed the complainant's FOI requests file after February 2016. The respondents nonetheless continued to receive demand letters from the complainant alleging that he did not receive the information specified, that he did not receive drafts of one of the internal investigation reports, and that he did not receive a letter from Lt. Smith to the Employee Assistance Program ("EAP").

9. It is found that, the complainant, in July 2016, questioned redactions to the records provided to him, and that the respondents reviewed those redactions and released some additional records to the complainant on July 14, 2016.

10. It is found that, the respondents continued to receive periodic demands regarding his 2015 requests, and that the respondents filed these requests in their closed file, as they did not see anything new being requested.

11. It is found that, the complainant made another request to the complainants dated September 7, 2016 and received September 12, 2016, that alleged that the complainant had not received "a majority of the requested Freedom of Information requests originally sent on or about September 10, 2015." The complainant did not request that the records originally provided between November 2015 and January 2016 be provided again. Rather, the complainant was renewing his dissatisfaction with what had already been provided, as he had done in the past. Nonetheless, the respondents viewed this request as being worded somewhat differently from his 2015 requests, and as requesting new searches of Lt. Smith's emails with some new search terms.

12. It is found that, the respondents therefore retrieved new responsive emails, and provided them to the complainant on October 25, 2016.

13. It is found that, by letter to the complainant dated January 18, 2017, the respondents sought to ensure the complainant was in possession of all the records responsive to his requests, and therefore attached copies of the records previously provided to him between November 2015 and January 2016, and also six pages of attachments to emails that were previously not provided.

14. 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.

15. 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 (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.

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

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

18. Section 1-206(b)(1), G.S., provides in relevant part:

> Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed *not later than thirty days after such denial* …. [Emphasis added.]

19. It is found that the vast majority of the records sought by the complainant were requested in September 2015, and provided between November 2015 and January 2016. These requests and responses all fall far outside the Commission's jurisdiction under §1-206(b)(1), G.S., as no complaint was filed until October 2016. The few additional records requested in September 2016 were provided in October 2016. It is found that the respondents' provision of records to the complainant was thorough and

prompt under the facts and circumstances of this case, given the scope of his requests, the number of requests made by the complainant, and the respondents' current resources.

20. It is concluded that the respondents did not violate the FOI Act as alleged.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 23, 2017.

Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

WILLIAM FREEMAN, 135 Tatnic Road, Brooklyn, CT 06234

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, DIVISION OF STATE POLICE; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, DIVISION OF STATE POLICE, c/o AAG, Stephen R. Sarnoski, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105

Cynthia A. Cannata
Acting Clerk of the Commission

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