

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Ian Cooke,

Complainant

against

Docket #FIC 2017-0718

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

Respondents

October 24, 2108

The above-captioned matter was heard as a contested case on April 3, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts 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. It is found that, by letter dated November 6, 2017, the complainant made a request to the respondents for certain records related to “the case State v. Ian Cooke, submitted by the Groton Police Department, local case #2006-05224, Laboratory Case #ID-06-1544, between the dates of June 2006 and the present.” It is found that the complainant’s request included the following six itemized requests:

[a] All information relating to the FOIA request submitted by Ian Cooke dated March 8, 2017 relating to this case of:

[1] Any action taken and information in support thereof by the lab, Attorney Rau, Mrs. Lopes-Phelan, and any other state personnel following the discovery of ‘missing’ records from the above case files. Specifically, that following a

hearing in the March 8, 2017 FOIA complaint it was discovered that records were missing from the case file relating to 'firearms,' if any action was taken in response to this discovery, all information relating to that discovery is being requested.

[2] All emails between Attorney Rau, Mrs. Lopes-Phelan, and any other state personnel following the March 8, 2017 request to include any information relating to the discovery of missing files in this case.

[b] All information relating to 'Robert Hathaway's' employment at the lab; personnel record (redacted for personal identifying information), date of departure from the lab, any involvement with the lab after his departure/retirement.

[c] All information relating to 'Ken Zercie' (sic) circa February 25, 2010 to include:

[1] Information relating to his role at the lab at this time, his duties and obligations at the lab.

[2] Any communications between him and 'John Walkley', 'Robert Hathaway', and/or 'John McNicholas' between 2008 and 2010. To include any requests for expert examination/defense examination of witnesses/evidence at the lab by these individuals made to 'Ken Zercie.'

[d] Any information relating to records requests/records transfers from the lab to: Groton Police Department, State's Attorney's Office, John Walkley, Rhett D'Amico, Lawrence Tytla, Robert Hathaway, Terry Melton, and/or John McNicholas, to include:

[1] any subpoenas for records/personnel [;]

[2] any records sent to the above [; and]

[3] any records requested from the above; whether or not the requests were honored.

[e] All lab protocols/regulations/rules/guidelines relating to 'expert(s) for the defense' to include:

[1] Any approval process that may be required for defense experts to gain access to the lab/evidence.

[2] Information on the role of defense experts at the lab once they are permitted access. Specifically, how these expert(s) are treated at the lab, are experts escorted in/around the lab, are experts permitted to physically touch/handle/examine/test evidence in the lab's custody, are there security/verification protocols in place at the lab relating to experts e.g. are experts required to sign any sort of logbook commemorating their access to the lab and/or to specific evidence, are experts required to wear any sort of identification in the lab; how to [sic] personnel interact with these expert(s).

[f] If there are any such logbooks/records produced by the lab relating to defense experts or any record that would commemorate such persons' access to the lab, produce that information for March 24, 2010 and May 24, 2010. ("November 6th request").

3. By letter dated November 21, 2017 and filed on December 1, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his November 6th request, described in paragraph 2, above.

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 (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.

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, facsimile, electronic or certified copy of any public record."

7. 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.

8. It is found that by letters dated December 28, 2017, and January 8, 2018, the respondents provided the complainant with copies of records responsive to his November 6th request.

9. At the hearing, the complainant claimed that the respondents had not provided him with all records responsive to his November 6th request; specifically, log book entries, an incident report, employee information for Robert Hathaway, and records relating to requests by defense experts to access the Forensic Science Laboratory. The complainant also claimed that information was improperly redacted from certain emails provided to him by the respondents.

10. With respect to the records that the complainant specifically identified as missing, the respondents testified that the log book entries were already provided to the complainant in response to a previous records request and the incident report “should have gone out” with the December 28, 2017 letter, described in paragraph 8, above. Nevertheless, the respondents testified that, after the hearing, they would send copies of such records, as well as employee information for Robert Hathaway, to the complainant. The respondents also testified that they conducted a search for, but could not locate, records relating to requests by defense experts to access the Forensic Science Laboratory. In addition, the respondents claimed that the emails provided to the complainant were redacted as attorney-client privileged communications.

11. After the hearing in this matter, by email received on April 5, 2018, the respondents informed the Commission that they would be sending the complainant additional documents responsive to his November 6th request.¹ Attached to the April 5th email were the following: copies of a cover letter, dated April 5, 2017, addressed to the complainant, log book entries, an incident report, employee information for Robert Hathaway (with redactions), and an unredacted version of the emails described in paragraphs 9 and 10, above.

12. It is found that, as of the time of the hearing in this matter, the respondents had not provided the complainant with all records responsive to his November 6th request. It is concluded, therefore, that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., of the FOI Act.

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

1. If they have not done so already, the respondents shall forthwith provide to the complainant copies of the records described in paragraph 11 of the findings, above, free of charge.

¹ The respondents’ April 5, 2018 email (with attachments) has been marked as Respondents’ Exhibit 1 (after-filed).

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting
of October 24, 2018.



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:

IAN COOKE, #340812, Garner Correctional Institution, 50 Nunnawauk Road, Newtown, CT 06470

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General James M. Belforti, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission