FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by FINAL DECISION

Timothy Townsend,

Complainant

against Docket #FIC 2016-0020

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 October 13, 2016

The above-captioned matter was heard as a contested case on August 1, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. This matter was consolidated for hearing with Docket #FIC 2016-0021, *Timothy Townsend v. Commissioner, et al.* 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.).

The consolidated matters were first scheduled to be heard on April 16, 2016, at which time the Commission learned that the complainant's address (his correctional institution) had been changed since the filing of the complaint, and neither the complainant nor the Department of Correction had notified the Commission of this fact.

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 January 11, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to respond to his request for records.

3. It is found that the complainant made a December 11, 2015 request for:

> all documents related to case 1000593846, which was handled by Tpr. R. Mangham #929. I would like all documents and photos, not limited to emails, faxes, letters (with envelopes), and all other tangible evidence related to the above case number. Please respond in the time allotted by statute.

4. It is found that the respondents did not respond to the request until notified by the Commission on March 4, 2016 of the filing of the complaint, at which time they first acknowledged the request, and then informed the complainant that he would be required to tender a fee of $16.00 per §29-10b, G.S., before the respondents commenced a search for the records.

5. It is found that the complainant did not respond to the respondents' demand for $16.00, not having sufficient funds at the time of the demand to tender payment.

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. 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.

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

9. 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.

10. Section 29-10b, G.S., provides:

> The Commissioner of Emergency Services and Public Protection shall charge the following fees for the item or service indicated:
>
> (1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, sixteen dollars.
>
> (2) Each copy of an accident or investigative report, sixteen dollars.

11. The complainant asserts that the respondents did not timely respond to his request, and that because of the three-month delay between the request and the acknowledgment of the request, the complainant no longer had funds to satisfy §29-10b, G.S.

12. Section 1-206(a), G.S., provides in relevant part:

> Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request ….

13. 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.

14. It is found there was an unexcused delay in the respondents' acknowledgment of the request and demand for payment of the fee required by §29-10b, G.S., and that the respondents' failure in this regard is deemed to be a denial, within the meaning of §§1-206(a) and (b)(1), G.S.

15. It is also found, however, that under the specific facts and circumstances of this case, the respondents ultimately did not deny the complainant's request.

16. 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 complainant is dismissed.

2. The respondents are urged to promptly acknowledge and seek payment for requests made pursuant to §29-10b, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 13, 2016.

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:

Timothy Townsend #243804
Enfield Correctional Institution
289 Shaker Road
Enfield, CT 06382

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 James W. Caley, Esq.
Assistant Attorney General
State of Connecticut,
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110 Sherman Street
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Cynthia A. Cannata
Acting Clerk of the Commission

FIC/2016-0020/FD/cac10/13/2016