

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jorge Alvarez,

Complainant

against

Docket #FIC 2015-701

Chief, Police Department,
City of New Haven; Police
Department, City of New Haven;
and City of New Haven,

Respondents

July 27, 2016

The above-captioned matter was heard as a contested case on January 26, 2016, 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 21, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for all police records concerning his arrest.
3. It is found that the complainant made an October 14, 2015 request to the respondent New Haven Police Department for “any and all police reports, affidavits, warrants and statements pertaining to the above-referenced individual’s arrest in connection with the above-referenced docket.” The request identified the complainant as the person arrested, and provided his date of birth, the number of his Uniform Arrest Report, the New Haven Police Department case number, and the arrest date.
4. It is found that the request was the second made for the complainant’s records, the first having been made on April 27, 2015.
5. It is found the respondents replied on October 14, 2015 that the “[r]ecord requested is not on file at this time” and that the request was denied because “report too old.”
6. It is found that the respondents described the records as “too old” because they were stored on microfiche, and the respondents didn’t have a microfiche reader, or easy access to one.

7. However, ultimately the respondents began a belated search for the requested records.

8. It is found that the complainant supplied all the correct information concerning his case, and that the Uniform Arrest Report number and the New Haven Police Department case number were both numbers created by the respondents for the complainant's case.

9. Nonetheless, it is found that the information supplied by the complainant led the respondents to an unrelated case erroneously assigned the complainant's case number, and that the respondents expended significant time and effort finding equipment that would read and print a copy of the (wrong) microfiche record.

10. It is found that, ultimately, the respondents identified the correct case.

11. It is found that the respondents had not provided the requested records as of the date of the hearing in this matter, because they needed to review the records and withhold signed witness statements exempt from disclosure under §1-210(b)(3)(C), G.S., and any autopsy report exempt from disclosure pursuant to §19a-411, G.S.

12. 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.

13. 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.

14. 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.”

15. Section 1-210(b)(3)(C), G.S., provides that disclosure is not required of “signed statements of witnesses.”

16. Section 19a-411(b), G.S., provides in relevant part:

The report of examinations conducted by the Chief Medical Examiner, Deputy Chief Medical Examiner, an associate medical examiner or an authorized assistant medical examiner, and of the autopsy and other scientific findings may be made available to the public only through the Office of the Chief Medical Examiner and in accordance with this section, section 1-210 and the regulations of the commission.

17. Our Supreme Court has concluded that autopsy reports and other records of investigations conducted by the medical examiner’s office are exempt from disclosure pursuant to §19a-411(b), G.S.

18. 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.

19. It is concluded that the respondents violated §1-210(a), G.S., by failing to promptly provide a copy of any nonexempt requested records.

20. At the hearing, but not in his complaint, the complainant requested the imposition of civil penalties against the respondents, on the grounds that the New Haven Police Department is one of the most difficult to work with, as shown by its errors and miscues in this case.

21. Section 1-206(b)(2), G.S., provides in relevant part:

... upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

22. The Commission takes administrative notice of the fact that the New Haven Police Department, like the police departments of other large Connecticut cities, is not an unfamiliar party at the Commission.

23. However, while the delay in providing the requested records to the complainant was entirely the fault of the respondents’ filing practices, it is not apparent that such a failure in this case was without reasonable grounds.

24. Moreover, the Commission is unaware of any other case in which the provision of records was unduly delayed by problems with the respondents' filing system.

25. Additionally, no evidence was presented at the hearing that would identify the custodian or other official directly responsible for the denial of the complainant's right to promptly receive copies of public records under §1-210(a), G.S.

26. Since the request for civil penalties was not raised in the complaint, and for the reasons cited above, the Commission therefore declines to consider the imposition of civil penalties

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 already done so, the respondents shall forthwith provide copies of the requested records to the complainant.
2. In complying with paragraph 1 of this order, the respondents may withhold signed witness statements that are exempt pursuant to §1-210(b)(3)(C), G.S., and the state medical examiner's autopsy report and other records of investigations conducted by the medical examiner's office that are exempt pursuant to §19a-411, G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 27, 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:

Jorge Alvarez
c/o Donald Meehan
Bansley/Anthony, LLC
265 Orange Street
New Haven, CT 06510

Chief, Police Department, City of New Haven;
Police Department, City of New Haven; and
City of New Haven
c/o Kathleen Foster, Esq.
Office of the Corporation Counsel
165 Church Street
Hartford, CT 06510

Cynthia A. Cannata
Acting Clerk of the Commission