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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2016-0449

Commissioner, State of Connecticut, Department of
Emergency Services and Public Protection; and State of
Connecticut, Department of Emergency Services and
Public Protection,
Respondent(s)

February 7, 2017

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, March 8, 2017**. 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 February 24, 2017**. 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, an **original and fourteen (14) copies** must be filed **ON OR BEFORE February 24, 2017**. **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 **fifteen (15) copies** be filed **ON OR BEFORE February 24, 2017**, 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: John Kaminski
Assistant Attorney General Neil Parille

FIC# 2016-0449/Trans/wrbp/KKR/VDH/2017-02-07

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

John Kaminski,

Complainant

against

Docket #FIC 2016-0449

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

Respondents

November 1, 2016

The above-captioned matter was heard as a contested case on October 3, 2016, at which time 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, 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 January 22, 2016, the complainant made a request to the respondents for copies of a "complaint file," an investigative report, and all written statements made in connection with the investigation of a complaint he made to the state police about improper conduct by staff of the Department of Correction (the "requested records").
3. It is found that, by letter dated February 1, 2016, the respondents acknowledged the request, described in paragraph 2, above, and informed the complainant that the request would be processed in accordance with the provisions of the Freedom of Information ("FOI") Act and any other applicable provision of law. The respondents further informed the complainant that there may be a fee "for an item or service in connection with [the] request."
4. It is found that, by letter dated February 8, 2016, the respondents requested from the complainant prepayment of the \$16.00 search/copy fee, and stated that upon receipt of payment, they would commence the search.

5. It is found that the complainant did not receive the February 8, 2016 letter from the respondents.

6. It is found that, by letters dated April 7, 2016, and May 19, 2016, the complainant renewed the request, described in paragraph 2, above.

7. It is found that the respondents did not acknowledge the letters, described in paragraph 6, above, or provide copies of the requested records to the complainant in response to such letters.

8. By letter dated May 27, 2016, and filed with the Commission on May 31, 2016, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to comply with the request, described in paragraphs 2 and 6, above.

9. Section 1-200(5), G.S., provides:

“[p]ublic 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 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

10. Section 1-210(a), G.S., provides, in relevant part:

[e]xcept 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 . . . or (3) receive a copy of such records in accordance with section 1-212....

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

12. It is found that, at some point after the complaint was filed with the Commission, the respondents became aware that the complainant believed he was entitled to a waiver of the \$16.00 search fee because, according to the complainant, he is indigent.

13. It is found that, by letter dated August 5, 2016, the respondents informed the complainant that he is not entitled to a waiver of the search fee authorized by §29-10b, G.S.

14. It is found that, as of the date of the hearing in this matter, the complainant had not paid the \$16.00 search fee, and the respondents had not yet conducted a search for the requested records.

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

The Commissioner of Public Safety 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.

16. It is found that the requested records are “accident or investigative report[s],” within the meaning of §29-10b, G.S.

17. In Edmondo Mendieta v. Dora B. Schiro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection, Docket #FIC 2015-628 (June 9, 2016)¹, the Commission concluded that waiver of the statutory fee for indigent individuals, available under §1-212(d)(1), G.S., is not available for the fee for accident or investigative reports, authorized by §29-10b, G.S.

18. Accordingly, because the complainant did not pay the \$16.00 search fee, it is concluded that the respondents did not violate the FOI Act by failing to provide copies of the requested records to the complainant.

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.



Kathleen K. Ross
As Hearing Officer

FIC2016-0449/hor/kkr/10--2016

¹ The Commission’s decision in Mendieta cited an earlier version of §29-10b, G.S. The statutory fee was increased to \$16.00 by Public Act 09-3 (June Sp. Sess.).