



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Michael Courtney and the Office of the Chief
Public Defender
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0699

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

August 3, 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 **2:00 p.m. on Wednesday, August 23, 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 August 11, 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 August 11, 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 August 11, 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



Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Michael Courtney and the Office of the Chief Public Defender
Commissioner, State of Connecticut, Department of Emergency Services and Public
Protection; and State of Connecticut, Department of Emergency Services and Public
Protection, c/o Attorney Alison Rau

FIC# 2016-0699/ITRA/TCB//KKR/WRBP/2017-08-3

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Michael Courtney and the Office
of the Chief Public Defender,

Complainant

against

Docket #FIC 2016-0699

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

Respondents

August 2, 2017

The above-captioned matter was heard as a contested case on December 21, 2016, at which time the complainants 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 dated October 4, 2016, and filed on October 5, 2016, the complainants appealed to the Freedom of Information ("FOI") Commission alleging that the respondents violated the FOI Act by failing to promptly comply with their records request and by requiring them to pay a fee.
3. It is found that by letter dated July 29, 2016, the complainants made a request to the respondents for copies of any and all police reports, arrest warrants, search and seizure warrants, records, reports, dispatch logs, field interview reports, citizen contact reports, and calls for services pertaining to David Vasquez. The complainants provided an alternate spelling and a birthdate.
4. It is found that, by letter dated August 4, 2016, the respondents informed the complainants that their request would "be processed in accordance with the provisions of the Freedom of Information Act and any other applicable provision of law."

5. It is found that by letter dated August 23, 2016, the respondents informed the complainants that the waiver of the statutory fee for a member of the Division of Public Defender Services, or an attorney appointed by the court as a special assistant public defender, found in §1-212(d)(5), G.S., of the FOI Act, does not apply to the fee for investigative reports provided pursuant to §29-10b, G.S. The respondents informed the complainants that the search for records responsive to their request would commence upon receipt of a check in the amount of \$16.00 payable to the respondent department.

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 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.

8. 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.”

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 1-212(a)(1), G.S., provides in relevant part that the fee for any copy provided in accordance with the FOI Act by a state agency “. . . shall not exceed twenty-five cents per page . . .” and §1-212(d)(1), G.S., provides in relevant part, that “. . . [t]he public agency shall waive any fee provided for in this section when . . . [t]he person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a special assistant public defender under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties.”

11. 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.

12. It is found that after corresponding with the respondents regarding the fee, complainants mailed the sixteen dollar fee on September 7, 2016.

13. It is found that, thereafter, the complainants inquired about the status of their request and that they were informed that the division of the respondent department that would search for and compile the responsive records was currently processing requests from November 4, 2015 and that the division complied with records requests in the order in which they were received.

14. After the correspondence referenced in paragraph 13, above, the complainants filed their October 4, 2016 appeal, as referenced in paragraph 2, above.

15. It is found that the records responsive to the complainants' request constitute "accident or investigative reports" within the meaning of §29-10b, G.S.

16. At the hearing on this matter, the complainants contended that to transfer state funds from one state agency to another did not make sense and that the respondents should not charge the complainants a fee.

17. It is concluded, however, that §1-212(d), G.S., on its face only provides a waiver of the fees established in §1-212, G.S., not the waiver of fees provided for in other statutes such as §29-10b, G.S.

18. It is also concluded that to decide otherwise would effectively be to legislate the §1-212(d), G.S., fee waiver into §29-10b, G.S.

19. It is further concluded, therefore, that the fee waiver provision of §1-212(d)(1), G.S., does not apply to the fees for records under §29-10b, G.S. See Docket #FIC 2015-628, Edmundo Mendieta v. Dora B. Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection; and Docket #FIC 2004-109, Cook v. Department of Public Safety et al.

20. Consequently, it is further concluded that the respondents did not violate the provisions of §§1-210(a) and 1-212, G.S., by failing to waive the fee set forth in §29-10b, G.S.

21. The complainants contended at the hearing on this matter that the respondents failed to fully comply with their request because they did not provide the criminal history of David Vasquez, which record they contend was within the scope of their July 29, 2016 request.

22. It is found that the complainants' July 29, 2016 request did not specifically include a request for Mr. Vasquez's criminal history nor was a specific request for such a record mentioned in subsequent correspondences and communications between the parties. It is found that the letter of request specifically identified records that are maintained in an arrest report, which reports are maintained by the Reports and Records Division of the respondent department. It is found that disclosure of records of criminal history is governed by §29-11, G.S., and those records are maintained by the State Bureau of Identification, which is a different division within the respondent department.

23. It is found, therefore, that it was not unreasonable that the respondents failed to read and understand the complainants' July 29, 2016 request to include a request for Mr. Vasquez's criminal history.

24. Consequently, it is concluded that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212, G.S., by failing to provide the complainants with a copy of the criminal history of Mr. Vasquez.

25. The complainants also contended at the hearing that the respondents' compliance with their July 29, 2016, request was not prompt within the meaning of §§1-210(a), and 1-212(a), G.S.

26. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

27. It is found that pursuant to the respondents' long standing policy, a search for records that are requested does not begin until the statutory fee has been submitted, and

as stated in paragraph 5, above, that the complainants were notified of this policy by letter dated August 23, 2016.

28. It is also found, as stated in paragraph 12, above, that the complainants mailed the sixteen dollar statutory fee on September 7, 2016. It is also found, however, that the Reports and Records Unit receives approximately 2000 records requests a month and has only six employees to respond to them. It is found, therefore, that the respondents' were not expected to even begin the search for records responsive to the complainants' request for some time because, as of September 27, 2016, they were responding to requests from November 4, 2015. It is found that, due to the severe backlog, compliance with the complainants' request could have taken over a year.¹

29. It is found, however, that under cover of letter dated December 16, 2016, the complainants' were provided with a three page document which is the only responsive record maintained by the Reports and Records Unit, but only after a specific request was made by an attorney within the respondent department's Legal Affairs Unit to expedite the request and move it ahead of all others due to the impending hearing on this matter.

30. Weighing all of the factors related to the complainants' request, it is found that the respondents' compliance therewith was without undue delay. It is therefore that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., under the facts of this case.

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

1. The complaint is hereby dismissed.
2. Although the Commission concluded, under the facts and circumstances herein, that the respondents promptly complied with the complainants' request, the Commission is concerned with the delays associated generally with the provision of records under §29-10b, G.S. The Commission, therefore, urges the respondents to continue to review their procedures and utilization of resources, with the aim of providing the public generally with more timely access to such records.

¹ See Docket #FIC 2016-0775; Stephen Williams v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection in which this Commission found that the respondents' Report and Records Unit estimated compliance with the complainant's request of one and one half to two years (due to an overwhelming work load and a reduction in staffing) was unacceptable and concluded that the respondents had violated §§1-210(a) and 1-212(a), G.S., of the FOI Act for failing to provide the requested records in a prompt manner.

A handwritten signature in black ink, appearing to read "Tracie C. Brown", is written over a horizontal line.

Attorney Tracie C. Brown
as Hearing Officer

FIC2016-0669/harr/cb/20170720