

Dontrell Brown,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0720

Chief, Police Department, City of Bridgeport;
Police Department, City of Bridgeport; and City
of Bridgeport

Respondent(s)

September 20, 2017

Transmittal of Proposed Final Decision Dated September 19, 2017

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 dated September 19, 2017, 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, October 11, 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 September 29, 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 September 29, 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 September 29, 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: Dontrell Brown, c/o Attorney Joseph Sastre
Attorney Tamara J. Titre

FIC# 2016-0720/TRA2HOR/VDH//LFS/WRBP/2017-09-20

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Second Report
of Hearing Officer

Dontrell Brown,

Complainant

against

Docket #FIC 2016-0720

Chief, Police Department, City of
Bridgeport; Police Department City
of Bridgeport; and City of Bridgeport,

Respondents

September 19, 2017

The above-captioned matter was heard as a contested case on February 15, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On August 23, 2017, the matter was considered by the full Commission, at which time the respondents appeared and presented argument on the hearing officer's report. The Commission then remanded the matter back to the hearing officer to consider further the legal arguments raised by the respondents. The respondents' new legal arguments are addressed in the report in paragraphs 24 through 30, below.

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 September 1, 2016, the complainant requested that the respondents provide him with copies of the following records:
 - a. The Bridgeport Police Department's written policy regarding procedures for conducting an internal affairs investigation; specifically, the complainant requested a copy of the policy that sets forth a prohibition against accepting an affidavit authored by a civilian complainant and instead requires a civilian complainant to sign an affidavit or statement that has been drafted (and/or

approved) by the police department's staff; and

- b. The written statement that the Bridgeport Police Department authored for the complainant's signature.

3. It is found that, by letter dated September 27, 2016, the respondents acknowledged the complainant's request and indicated that they were in the process of searching for responsive, non-exempt public records.

4. It is found that, by a handwritten note dated September 28, 2016, the complainant informed the respondents that he wanted them to fax him the non-exempt, public records so that there was no need to make copies.

5. By letter dated and filed October 14, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with copies of the records described in paragraph 2, above.

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. It is found that Dontrell Brown has filed several, written, civilian complaints against the Bridgeport Police Department. It is found that those civilian complaints are still open and pending with the department. It is further found that Mr. Brown also has acquired some criminal charges from the Bridgeport Police Department, which charges are also currently pending.

11. It is found that, in connection with the pending civilian complaints, the Bridgeport Police Department took an oral statement from Mr. Brown and then transcribed the statement. It is found that, subsequently, the Bridgeport Police Department requested that Mr. Brown come to the police department to execute the transcribed statement. It is found that, Mr. Brown, through counsel, offered to submit his own affidavit concerning the events that led to the filing of the civilian complainants. In this regard, it is found that Mr. Brown did not want to return to the police department, nor did he want to sign a statement drafted by the police department's staff.

12. It is found that Sergeant John Burke of the respondents' internal affairs unit informed Mr. Brown that he could not accept an affidavit drafted by Mr. Brown's counsel; rather, Mr. Brown was required, pursuant to Bridgeport Police Department policy, to sign the statement that had been drafted by the department's staff.

13. In response, it is found that Mr. Brown did two things: first, he requested a copy of the policy referred to in paragraph 12, above, and, second, he requested a copy of the written statement prepared by the Bridgeport Police Department for his signature. It is found that Mr. Brown informed the department that, he would have his attorney review the statement, and, if the statement was accurate, he would have it notarized and return it to the department.

14. It is found that Sergeant Burke replied, stating that the department also had a policy that required Mr. Brown to come to the department in person to sign the transcribed statement (so that an internal affairs investigation regarding the civilian complaints could begin) and, furthermore, that this policy prevented the police department from disclosing the transcribed, unsigned statement to Mr. Brown.

15. It is found that Mr. Brown, accompanied by his attorney, went to the Bridgeport Police Department seeking access to Mr. Brown's unsigned statement. It is found that the respondents did permit Mr. Brown to review the statement at the department. It is found that that the statement was forty-plus pages in length, that Mr. Brown did not have time to review the entire statement and that the respondents refused to allow Mr. Brown to obtain a copy of the statement.

16. It is found, however, that the respondents did provide the complainant with a copy of their Office of Internal Affairs' Policy and Procedures Manual (the "policy manual"). The complainant stated at the contested case hearing that this document satisfied the request for records set forth in paragraph 2.a, above.¹

¹ The Commission notes that, while the policy manual does not contain a prohibition on accepting an affidavit drafted by a civilian complainant, it does contain the following policy: "During the course of

17. With regard to the request for the unsigned statement set forth in paragraph 2.b, above, the respondents contend that such record is exempt from disclosure pursuant to §1-210(b)(1), G.S.

18. Section 1-210(b)(1), G.S., provides that disclosure shall not be required of “[p]reliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure.”

19. Section 1-210(b)(1), G.S., requires the respondents to prove that they determined that the public interest in withholding records clearly outweighs the public interest in disclosure. “The statute’s language strongly suggests that the agency may not abuse its discretion in making the decision to withhold disclosure. *The agency must, therefore, indicate the reasons for its determination to withhold disclosure* and those reasons must not be frivolous or patently unfounded.” Van Norstrand v. Freedom of Info. Comm’n, 211 Conn. 339, 345 (1989). (Emphasis added.)

20. Counsel for the respondents appeared at the contested case hearing, and submitted the policy manual and a blank civilian complaint form into evidence. The respondents did not call a witness to testify. Counsel for the respondents contended that, pursuant to Bridgeport Police Department policy, Mr. Brown’s statement is a preliminary draft until it is signed and sworn to under oath. She further contended that, once the statement is signed and sworn to under oath, it becomes a “final” document and Mr. Brown (or his counsel) are able to obtain a copy.

21. It is found that the respondents did not produce any evidence on the issue of why the public interest in withholding the unsigned statement clearly outweighs the public interest in disclosure. In other words, the respondents failed to establish a reasonable basis for their determination that a civilian complainant should not be permitted to obtain a copy of his statement to review (individually or with his counsel) until such statement has been signed and sworn to.²

22. “The burden of establishing the applicability of an exemption clearly rests upon the party claiming the exemption. This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel.” New Haven v. Freedom of Info. Comm’n, 205 Conn. 767, 775 (1987).

the investigation investigators will take sworn statements from all witnesses as well as from the concerned officer(s). This will be accomplished by taking a tape-recorded transcribed statement. The statement will be reviewed by the person giving it, after which an affidavit will be executed as to the truth of the contents of the same. Every person shall, after affidavit execution, be given a copy of their statement, if he so requests.” See §1.8.4 (6) (“Investigation of Civilian Complaint”); see also §1.8.7.3 (1) (“A complainant is entitled to receive a copy of their statement once they have read, signed and have been sworn under oath to the truthfulness of the statement.”).

² Interestingly, it is found that the policy manual also provides that “[t]he complainant may receive a copy of his statement. . . once a written request has been submitted pursuant to the Freedom of Information Act and approved by the Office of the City Attorney.” See §1.4.8.7.3 (4).

23. It is found that the respondents failed to prove an essential element of the exemption—that they made a non-frivolous determination that the public interest in withholding records clearly outweighs the public interest in disclosure. It is therefore found that the respondents failed to prove that the record described in paragraph 2.b, above, is exempt from disclosure pursuant to §1-210(b)(1), G.S.

24. On remand to the hearing officer, the respondents contended that they are prohibited from disclosing an unsigned and unsworn statement pursuant to federal common law. Specifically, the respondents contend that a stipulated settlement agreement, which resulted from Rafael Barros, et al. v. Joseph A. Walsh, et al, Civ. Action No. B-482 (Dec. 20, 1973), *precludes* them from disclosing a complaining citizen's statement until it signed and sworn to, and that, therefore, this federal case falls within the "except as otherwise provided" language of §1-210(a), G.S.

25. It is found that, in 1972, a civil rights action was filed against the City of Bridgeport, certain Bridgeport Police Officers, and others, alleging, inter alia, that a "systematic pattern of violence, intimidation and humiliation"³ had been carried out against a class of minority plaintiffs. It is further found that, on December 20, 1973, that lawsuit was resolved by way of a stipulated settlement and a consent judgement. It is found that the stipulated settlement governs the way the Bridgeport Police Department must handle and process civilian complaints filed against its police officers. It is found that the stipulated settlement is referred to as the "Barros" decree.

26. It is found that, in 1985, the Barros decree was modified. See Rafael Barros, et al. v. Joseph A. Walsh, et al., Civ. Action No. B-482 (RCZ) (Aug. 1, 1985).

27. It is found that the 1985 Barros decree contains the following provision:

During the course of the investigative process, investigators will take sworn statements from all witnesses as well as from the concerned officer(s). This will be accomplished by taking a tape recorded transcribed statement. The transcript will be reviewed by the person giving it, after which an affidavit will be executed as to the truth of the contents of the same. Every person shall, after affidavit execution, be given a copy of his/her own statement. In investigations the subject officer(s) will be given copies of the complainant's CC-1, with the names of the witnesses other than the complainant obliterated, prior to his/her statement or interview. Any person giving a statement or interview may have a representative present during such statement or interview. (Emphasis supplied).

³ The respondents' post-remand brief (and attachments thereto) and the complainant's post-remand brief (and attachments thereto) have been marked as full exhibits in this case—specifically, Respondents' Ex. D and Complainant's Ex. 7.

28. The respondents contend that the language cited in paragraph 27, above, particularly the underlined language, prohibits them from disclosing unsigned and unsworn statements.

29. It is found that the language referred to in paragraph 27, above, places an affirmative obligation on the respondents to disclose a witness statement once such statement has been signed and sworn to. In other words, the respondents cannot refuse a witness a copy of his or her statement, once the witness has signed, and averred to truth of, the statement.

30. This provision does not, however, contain language that affirmatively prohibits the respondents from providing a witness with a copy of his or her unsigned, unsworn statement. Moreover, it is found that because the cited provision does not contain the kind of clear, affirmative statement of confidentiality with regard to unsigned, unsworn statements, it cannot be construed as federal law shielding such statements from public disclosure. See, e.g., Chief of Police v. FOIC, 252 Conn. 377, 399 (stating that the “except as other provided by any federal law or state statute” language of §1-210(a) of the FOI Act was “intended to refer to other federal and state laws that by their terms shield specific information from disclosure”).

31. Accordingly, it is concluded that the respondents violated the disclosure requirements of §§1-210(a) and 1-212(a), G.S., when they declined to disclose to the complainant the record described in paragraph 2.b, above.

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

1. The respondents shall forthwith provide the complainant with a copy of the requested record described in paragraph 2.b of the findings, above, free of charge.



Valicia Dee Harmon
as Hearing Officer