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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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Gregory Cusack,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-087

Chief, Willimantic Police Department, Town of
Windham; Willimantic Police Department, Town
of Windham; Director of Personnel, Town of
Windham; and Town of Windham,
Respondent(s)

September 19, 2012

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, October 10, 2012**. 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 28, 2012**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE September 28, 2012**. **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 **fourteen (14) copies** be filed **ON OR BEFORE September 28, 2012**, 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: Gregory Cusack
Richard S. Cody, Esq.

9/19/2012/FIC# 2012-087/Trans/wrbp/CAL/KKR

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Gregory Cusack,

Complainant

against

Docket # FIC 2012-087

Chief, Willimantic Police Department,
Town of Windham; Willimantic Police
Department, Town of Windham;
Director of Personnel, Town of
Windham; and Town of Windham,

Respondents

September 18, 2012

The above captioned matter was heard as a contested case on July 26 and September 7, 2012, at which times the complainant and the respondents appeared 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)(A), G.S.
2. It is found that by letter dated January 18, 2012, the complainant made a request to the respondent Director of Personnel for "a complete copy of my entire personnel file, and all the documents in relation to it" (the "requested records").
3. It is found that on January 18, 2012, the respondent Director of Personnel provided the complainant with sixty pages of records, which comprised the training file of the complainant. The respondent director of Personnel also offered the complainant another copy of the complainant's personnel file, which he had previously received. At the September 7, 2012 hearing, the complainant testified that he did not review all of the new copies of records he had previously received. Nor did he take possession of the copy of his personnel file that he was offered on January 18, 2012.
4. It is found that, by letter dated February 10, 2012 and filed with the Commission on February 14, 2012, the complainant appealed to the Commission, alleging that the failure of the respondents to provide the requested records violated the Freedom of Information Act ("FOIA"). The complaint detailed three requests for records, the "original request" on February 14, 2011, "another verbal request in early November 2011", and "the most recent written request on January 18th, 2012".

5. 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.

6. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

7. It is concluded that the requested records are “public records” within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that the parties have a long, difficult history of records disputes that is only one part of a long, difficult history that resulted from an employer-employee dispute.

9. It is found that, following the “original request” on February 14, 2011, the complainant was provided, at no charge, with a copy of his entire personnel file (including records concerning physical examinations, psychological evaluations, field training reports, polygraph reports, and his application). The February 14, 2011 request was made to the respondent Director of Personnel, but the personnel files for members and former members of the respondent Police Department, such as the complainant, are maintained at the respondent Police Department.

10. It is found that the complainant was displeased that his personnel file did not include the certification of his field training requirement, a copy of a letter from the Connecticut Police Academy to the complainant concerning police officer certification,

and a certified letter the complainant sent to the respondent Chief. At the September 7, 2012 hearing, the complainant noted that his personnel file also did not include a letter of recommendation from the respondent Chief, which he had hoped to receive.

11. It is found that a Lieutenant at the respondent Police Department had declined to sign the certification of field training requirement for the complainant as a result of alleged performance deficiencies, but that subsequently the respondent Chief did sign the certification. The complainant then received a copy of the certification of field training requirement directly from the Connecticut Police Academy and forwarded a copy to the respondent Director of Personnel. These records were part of the training file which the respondent Director of Personnel then gave back to the complainant on January 18, 2012, as noted at paragraph 3, above.

12. It is found that at no time has the certification of field training requirement and related records been part of the complainant's personnel file at the respondent Police Department. Based upon the sworn testimony of Captain Clifford H. Spinner of the respondent Police Department, it is further found that the respondent Police Department has steadfastly declined to include the certification of field training requirement and related records in the complainant's personnel file. Indeed, Captain Spinner only became aware of the existence of these records on May 21, 2012 when the respondent Director of Personnel forwarded a copy of them to the respondent Police Department.

13. It is finally found that at the July 26, 2012 hearing, the respondents provided an additional complete copy of the complainant's personnel file as maintained at the respondent Police Department, and the training file as maintained by the respondent Director of Personnel, to the complainant.

14. It is concluded that the Commission does not have jurisdiction to require the Police Department respondents to maintain specific records in their files. Specifically, the Commission does not have jurisdiction to require the Police Department respondents to accept and maintain the certification of field training requirement and related records from the respondent Director of Personnel. The gravamen of the complainant's complaint is that these records should be part of his personnel file at the respondent Police Department.

15. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide copies of requested records which they maintained.

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.



Clifton A. Leonhardt
as Hearing Officer