

Since 1975



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi • email: foi@po.state.ct.us

Michael Place,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2012-027

Deputy Director, State of Connecticut, Judicial  
Branch, Court Operations Division, Legal  
Services; and Commissioner, State of  
Connecticut, Department of Emergency  
Services and Public Protection,  
Respondent(s)

November 21, 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, December 12, 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 November 30, 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 November 30, 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 November 30, 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: Michael Place  
Martin Libbin, Esq.  
James W. Caley, AAG  
Terrence M. O'Neill, AAG

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

Michael Place,

Complainant

against

Docket #FIC 2012-027

Deputy Director, State of Connecticut,  
Judicial Branch, Court Operations  
Division, Legal Services; and  
Commissioner, State of Connecticut,  
Department of Emergency Services and  
Public Protection,

Respondents

November 20, 2012

The above-captioned matter was heard as a contested case on June 11, 2012, at which time the complainant and the respondents appeared, stipulated to certain facts 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 et al, 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. By letter dated January 28, 2012, and filed on February 7, 2012, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records request. The complainant requested the imposition of a civil penalty against each respondent.
3. 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.

4. 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.

5. 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.”

6. It is found that, to the extent they exist, the requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

7. With respect to the respondent Deputy Director, the complainant made requests on August 15, 2011 and December 21, 2011, for copies of the following records:

- a. Any and all calls made to and from the Danielson Probation Office on July 17, 2008 – which should include a record of the telephone numbers dialed to other state agencies or departments;
- b. Any and all e-mails, including their content, sent and received by the Danielson Probation Office on July 17, 2008;
- c. Any and all case notes of the Danielson Probation Office drafted on July 17, 18, and 23, 2008, concerning the complainant;
- d. Any and all reports, or notes made by any member of the Danielson Probation Office concerning the complainant that lead to the probation violation warrant of July 17, and 18, 2008;
- e. Any and all reports made by supervisor Maureen Aquino and Sharon Probst on July 17, and 18, 2008;
- f. Any and all e-mail, telephone and fax records of July 17, 2008, between Amy Gile of the Danielson Adult Probation Office and Detective Bly or any other police officer from the Putnam Police Department;

- g. Any and all case notes, reports, photos (including those received by e-mail on July 17, 2008), or evidence receipts related to the investigation and arrest of the complainant;
- h. Any and all training records of Amy Gile and Jim Morrison prior to July 17, 2008;
- i. Any and all copies of the search and seizure policies of Connecticut Adult Probation prior to April 2009;
- j. Any and all log-in entries made on all computers of all of Adult Probation on July 17, 2008 by Amy Gile and Jim Morrison;
- k. Any and all sign-in sheets of adult probationees for July 16 and 17, 2008; and
- l. Any and all records related to a Daniel Simonelli, including any statements against the complainant regarding a violation of probation between July 16, and July 23, 2008.

8. It is found that the respondent Deputy Director responded, through counsel, to the complainant's requests by letters dated September 8, 2011; February 3, and 15, 2012; April 14, 2012; and May 9, and 21, 2012.

9. It is found that, by those letters, the complainant was informed that the respondents do not maintain telephone logs and therefore, the respondents do not maintain any records responsive to the complainant's request described in paragraph 7a, above.

10. With respect to the records described in paragraphs 7b through 7g, and 7j through 7l, above, the respondent Deputy Director informed the complainant that because the FOI Act only applies to the administrative functions of the Judicial Branch, those records would not be provided.

11. Section 1-200(1), G.S., provides in relevant part that:

“Public agency” or “agency” means: (A) ...includes any judicial office, official, or body or committee thereof but only with respect to its or their administrative functions, and for purposes of this subparagraph, “judicial office” includes, but is not limited to, the Division of Public Defender Services ...

12. The Connecticut Supreme Court has determined that for purposes of the FOI Act, “administrative records are records pertaining to budget, personnel, facilities and physical operations of the courts and that records created in the course of carrying out the courts’ adjudicatory functions are categorically exempt from the provisions of the act.” Clerk of the Superior Court v. Freedom of Information Commission, 278 Conn. 28, 42 (2006).

13. It is found that the records described in paragraphs 7b through 7g, and 7j through 7l, above, are records that do not pertain to the Judicial Branch's administrative functions.

14. It is concluded, therefore, that the records described in paragraphs 7b through 7g, and 7j through 7l, above, are not subject to the mandatory disclosure provisions of the FOI Act.

15. Finally, it is found that the complainant was provided with a copy of the Adult Services Search and Seizure policy and the training records, with the certificates of completion, for probation officers Amy Gile and James Morrison and, therefore, complied with the complainant's request described in paragraphs 7h and 7i, above.

16. Based upon the findings in paragraphs 9, 10, and 15, above, the respondent Deputy Director did not violate the FOI Act as alleged by the complainant.

17. With respect to the complaint against the respondent Commissioner, it is found that, by letter dated December 21, 2011, the complainant made a request for the following records:

- a. Copies of any and all e-mail transmissions, telephone communications and faxes both made and received by the staff of Connecticut Forensic Science Laboratory in reference to lab case #ID08-001536 and ID08-002445, including the date and time of those transactions to and from the Putnam Police Department and the State Police Department at Troop D on or about 8-14-08;
- b. The names of all state of Connecticut Forensic Science Laboratory Technicians who processed any and all evidence (including DNA samples, palm prints, fingerprints or any other testing) relevant to the investigations and arrest of Michael Place and Shawn Dyer case #s ID08-001536 and ID08-002445;
- c. Copies of all complaints and laboratory testing misconduct by the technicians that handled any evidence pertaining to case #s ID08-001536 and ID08-002445;
- d. Any and all state and federal complaints, criminal lab inspection reports and accreditations for the crime lab (forensic DNA) including any and all written deficiency reports or revocations on the laboratory that handled any evidence pertaining to case #s ID08-001536 and ID08-002445;
- e. All photos of evidence pertaining to the above mentioned case #s; and
- f. Any and all reports, notes, and photos pertaining to the above mentioned case #s.

The complainant also requested that the respondent Commissioner provide the records free of charge because he claimed he was indigent.

18. It is found, however, that by letter dated March 30, 2012, the respondent Commissioner informed that complainant that until the complainant satisfied his statutory obligation to pay for the records previously sent to him, no additional records would be provided.

19. It is found that the complainant was provided with 30 pages of records pursuant to a prior records request. It is found that the complainant, claiming that he was indigent, requested that the \$7.50 fee for the copies be waived and submitted documentation to support his claim of indigence.

20. It is found that in response to the complainant's request for a waiver of the \$7.50 fee, the respondent Commissioner initially informed the complainant, by letter dated January 3, 2012, "that a review of the documentation [he] submitted had determined that [he did] not meet the Department of Emergency Services and Public Protection indigency standard since [he] had more than sufficient income to cover the cost of the request and since [his] notarized affidavit contained inaccurate information in conflict with the supporting documentation [he] submitted."

21. It is found that when the complainant challenged the denial of his fee waiver request, the respondent Commissioner replied in a February 9, 2012 letter stating that "because of [his] failure to comply with the requirements of the DESPP indigency policy, your inclusion of false and misleading information on your sworn affidavit, and the fact that [he] had sufficient funds around the time of [his] request to cover the cost of the records, [his] indigency application remains denied." It is found that the letter further stated that "[n]o additional records will be provided under the Freedom of Information Act until such time as [he] satisfied [his] statutory obligation to pay for the records previously provided."

22. At the hearing on this matter, the respondent Commissioner contended that the complainant was not indigent and that he was required to pay the outstanding fee before they would comply with the December 21, 2011 request.

23. It is found that, as of the date of the hearing in this matter, the complainant had not paid the \$7.50 fee for the records described in paragraph 19, above.

24. At the hearing on this matter, the complainant testified, and it is found, that he did not intentionally misrepresent his income but rather provided the information that he thought was being requested on the fee waiver request forms.

25. It is found, therefore, that, at this time, the complainant's failure to pay the \$7.50 fee does not reflect a pattern of non-payment by him and will not be held against him in this case.<sup>1</sup>

---

<sup>1</sup> See Docket #FIC2012-027, Omar Miller v. Rikel Lightner, State of Connecticut, University of Connecticut Health Center, Correctional Managed Health Care; and State of Connecticut, University of Connecticut Health Care, Correctional Managed Health Care (After finding that complainant demonstrated a pattern of failing to pay copying fees, Commission concluded that respondents had not violated FOIA by refusing to comply with request until prior fees were paid.)

26. The respondents also argued at the hearing on this matter that the complainant does not qualify for a waiver of the copying fee for the records responsive to his December 21, 2011 request because he is not indigent.

27. Section 1-212(d)(1), G.S., “[t]he public agency shall waive any fee provided for in this section when ... [t]he person requesting the records is an indigent individual....”

28. Since 1992, the Commission has taken the position that the term “indigent individual” in §1-212(d)(1), G.S., allows each public agency “to set its own standard of indigence, provided the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.” Thomas May v. FOIC, Docket No. HHB CV 06-4011456, Superior Court, J.D. of New Britain, Memorandum of Decision dated May 2, 2007 (Schuman, J.); see also docket #FIC 91-356, Kulick v. West Hartford Town Manager.

29. In every case in which the Commission has approved a standard of indigence, agencies have compared, or sought to compare, economic information about the individual against objective criteria, and no standard has precluded the possibility of finding an individual to be indigent. See, e.g., docket #FIC 2005-219, Rossi v. West Haven (test for determining indigence based on the definition set forth in Black’s Law Dictionary and §17a-495, G.S., is on its face objective, fair and reasonable); docket #2005-134, Fuller v. Department of Correction (standard is met if an inmate’s account contains less than \$5.00 and no more than \$5.00 for a period of ninety days); docket #2002-297, Connecticut Civil Liberties Union Foundation v. Connecticut Housing Finance Authority (not unfair or unreasonable to require documentation of income statement of client, and proof that such client has no means to pay Freedom of Information Act fees); docket #FIC 1999-094, Levine v. Norwich (approves application of Black’s Law Dictionary definition of indigence and the poverty level criteria utilized by the NDSS); docket #FIC 1996-431, Legal Aid Society of Hartford County v. West Hartford Housing Authority (inappropriate for the Commission to overturn the respondent’s determination to deny a fee waiver to individuals who never submitted income information); docket #FIC 1993-354, Libby v. Middletown (approving criteria based on the definition of indigent in Black’s Law Dictionary, information received from the Welfare and Tax Assessor’s Departments and the agency’s knowledge regarding the complainant’s lifestyle); docket #FIC 1991-356, Kulick v. West Hartford (reliance upon the federal government’s established poverty levels for guidance in establishing a working definition of indigence not shown to be subjective, unfair or unreasonable); docket #FIC 1987-264, Cooper v. East Hartford Police Department (evidence that requestor has received donations of approximately \$2,000 from former co-workers to assist in the payment of legal fees connected with the suspension of his employment, that requestor also owns a car, maintains an apartment and has approximately \$8,000 in a savings account, sufficient for agency to establish lack of indigence); compare: docket #FIC 1995-105, Dietzko v. Plainville (failure by agency to show that it used objective criteria, guidelines or standards to determine indigence, or that such an indigence standard was in fact applied to the complainant); docket #FIC 1995-426, Presutti v. Department of Housing (no reasonable standard or application of standard when the agency relies on tax returns indicating only that requestor was married but filing separately as opposed to filing a joint income tax return, that requestor lived in a home and that he had a certain dress and appearance that did not comport with the agency’s conception of indigence status, and that the requestor was generally known to have worked as a real estate

developer who had undertaken projects that required financial backing); docket #FIC 2005-304, Nappi v. New Haven Police Department (concludes fee must be waived when agency failed to establish that it had a documented criteria for determining indigence and that the complainant did not meet that criteria).

30. It is concluded that any reasonable and fair standard for establishing indigence must contain, at a minimum, objective criteria for determining whether an individual is in fact indigent. The application of such a standard must permit economic facts about the individual requesting indigent status to be measured against those criteria, and the application of such a standard must not preclude any possibility of finding the individual to be indigent. [See Food Services Division, Department of Correction et al. v. Freedom of Information Commission et al. Docket No. HHBCV074014939, Superior Court, J.D. of New Britain, Memorandum of Decision dated April 29, 2008 (Schuman, J.) (court held that department did not have the discretion to define indigence in a way that makes it impossible to obtain a complete fee waiver.)]

31. At the hearing on this matter, the respondent DESPP's indigence standard was loosely described as being met only when a person can establish an inability to meet their basic needs if they were forced to pay for the copies.<sup>2</sup>

32. It is found that even if the complainant's inmate account had a zero balance at the time of his request, his basic needs would still be met, although by the Department of Correction, if he were forced to pay for his copies.

33. Consequently, it is found that neither the complainant, nor any other inmate, could ever be determined indigent pursuant to the respondent Commissioner's indigent standard, as it was described at the hearing on this matter.

34. It is found that the respondent Commissioner's indigence standard is neither fair nor reasonable.

35. It is concluded, under the facts and circumstances of this case, that the respondent Commission violated §1-212(d)(1), G.S., by failing to waive the fees for copying records for the complainant requested in his December 21, 2012 request.

36. It is also found that, although §1-212(c), G.S., permits the respondent Commissioner to require prepayment of the fee for copies if the fee is ten dollars or more, there is no evidence in the record that the fee for copies of any responsive records maintained by the respondent Commissioner amounts to or exceeds ten dollars.

37. It is further found, that, under the facts and circumstances of this case, there is nothing in the FOI Act that permits the respondent Commissioner to deny the complainant prompt access to copies of the requested records.

---

<sup>2</sup> The policy is apparently written and was provided to the complainant, however it was not submitted as evidence at the hearing in this matter.

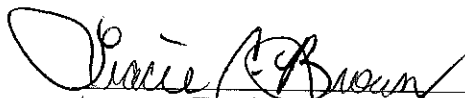


38. It is therefore, concluded that the respondent Commissioner violated §§1-210(a) and 1-212(a), G.S., when he failed to promptly comply with the complainant's December 21, 2012 records request.

39. This Commission in its discretion declines to consider civil penalties in this matter.

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 against the respondent Deputy Director, State of Connecticut, Judicial Branch, Court Operations Division, Legal Services.
2. Henceforth, the respondent Commissioner, State of Connecticut, Department of Emergency Services and Public Protection shall strictly comply with the disclosure requirements of §§1-210(a) and 1-212(a), G.S.

  
Attorney Tracie C. Brown  
as Hearing Officer