

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT
18-20 Trinity Street Hartford, CT 06106
Telephone: (860) 566-5682
Toll-free (CT only): (866) 374-3617
Fax: (860) 566-6474

James Torlai,

Complainant(s)

against

Notice of Meeting

Docket #FIC 2009-325

Commissioner, State of Connecticut,
Department of Public Safety; and
State of Connecticut, Department of Public Safety,
Respondent(s)

March 21, 2013

Transmittal of Proposed Final Decision March 20, 2013

In accordance with Sections 4-179 and 4-183(h) of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision March 20, 2013 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, April 10, 2013**. 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 MARCH 29, 2013**. 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 twelve (12) copies** be filed **ON OR BEFORE MARCH 29, 2013**. **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 **twelve (12) copies** be filed **ON OR BEFORE MARCH 29, 2013**, 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: James Torlai
Terrence M. O'Neill, Esq.

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

PROPOSED SECOND
FINAL DECISION

James Torlai,

Complainant

against

Docket #FIC 2009-325

Commissioner, State of Connecticut,
Department of Public Safety; and
State of Connecticut, Department
of Public Safety,

Respondents

March 20, 2013

The above-captioned matter was heard as a contested case on October 20, 2009, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

A proposed final decision prepared by the hearing officer was mailed to the parties on March 11, 2010. At a regular meeting of the Commission on May 12, 2010, the Commission considered the proposed final decision. After hearing argument from the respondents (the complainant was not present at the hearing), the Commission moved to amend the proposed final decision to include an additional order as follows: "Enforcement of Paragraph 1 of the order is stayed until resolution of the appeal of the memorandum of decision in Commissioner, State of Connecticut, Department of Public Safety v. Freedom of Information Commission, et al. (No. CV 09 4020071S) (April 21, 2010)." Thereafter, the Commission unanimously adopted the amended proposed final decision. Notice of the final decision was mailed to the parties on May 20, 2010.

On July 1, 2010, the Commissioner, State of Connecticut, Department of Public Safety appealed the Commission's final decision to the Superior Court. On October 2, 2012, the Superior Court heard oral argument on the appeal. During the course of the oral argument, James Torlai, the complainant in the underlying administrative matter, made an oral motion to have the court remand the case back to the Commission so that he could amend the underlying request for records as one seeking "solely the names of arrestees, not barred by statutory erasure provisions." By order dated October 2, 2012, the Superior Court granted Mr. Torlai's motion to remand and ordered him to file the amendment with the Commission. The court retained jurisdiction to consider any

amended final decision issued by the Commission.

By letter dated October 2, 2012 and filed October 9, 2012, the complainant filed his amendment with the Commission. In his amendment, the complainant states as follows: "I am asking for a revised decision. The effect of the decision I seek would be identical to your original decision, it would require the State Police to provide the names and addresses of the people they arrested, however it would not include your general interpretation of Section 1-215." The complainant further clarified his amendment as follows: "I am not seeking the names and addresses of people arrested if either of the following conditions are true: 1) Records pertaining to the charges in the particular arrest were erased at the time of my request; [or] 2) The person arrested was a juvenile at the time of the arrest."

After consideration of the entire record, including the complainant's October 2, 2012 amendment, 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 March 5, 2009¹, the complainant made his initial request for records from the respondents, in which he sought copies of 40 pages from a log book that contains records created by the Department of Public Safety ("DPS") when it conducts, or assists local police departments with, DUI roadblocks. It is further found that, by letter dated March 18, 2009, the respondents acknowledged the complainant's request and informed him that they were in the process of gathering the responsive records. The respondents further informed the complainant that he would be notified with regard to any fees that might be due once the responsive records were compiled.
3. It is found that, on April 21, 2009, the respondents provided the complainant with all of the records responsive to the request—40 pages in total. It is further found that, by letter dated April 21, 2009, the respondents informed the complainant that some of the information contained in the records had been redacted because it was exempt from the disclosure provisions of the Freedom of Information ("FOI") Act.
4. It is found that, by letter dated May 4, 2009, the complainant corresponded with the respondents, seeking that they further explain the nature of the redactions that they had made in the records.
5. It is found that, by letter dated May 11, 2009, the respondents informed the complainant that some of the information had been redacted from the records because it was exempt from disclosure pursuant to the state's erasure statutes, and that other information had been redacted from the records because it concerned pending prosecutions.

¹ Based on the testimony and documentary evidence submitted in this case, the Commission finds that the date on the complainant's request for records, to wit "3/5/08," is a typographical error. It is found that the actual date of the request made in this case is March 5, 2009.

6. By letter dated May 25, 2009 and filed June 2, 2009, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records. In his letter of complaint, the complainant indicated that he was not challenging any of the redactions made in the records by virtue of Connecticut's erasure statutes, but rather was only challenging the redactions that the respondents made with regard to pending prosecutions. In addition, at the hearing on this matter, the complainant testified that he was not challenging the redactions in the records made to keep confidential the name of the person into whose custody an arrested individual was released.

7. 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.

8. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

9. Section 1-212(a)(1), G.S., provides in relevant part that:

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

10. It is found that the respondents maintain the documents described in paragraph 2, above, and it is therefore concluded that such records are "public records" within the meaning of §§1-200(5), 1-210(a), and 1-212(a) G.S., and that copies of such records must be provided in accordance with §§1-210(a), and 1-212(a) G.S., unless the records, or portions of the records, are exempt from disclosure.

11. At the hearing on this matter, the respondents contended that the records were redacted pursuant to §1-215, G.S, because the cases to which the records pertain were "pending." Furthermore, the respondents specifically stated that they were not claiming exemption for the records at issue pursuant to §1-210(b)(3), G.S.

12. Section 1-215, G.S., provides as follows:

(a) Notwithstanding any provision of the general statutes to the contrary, and except as otherwise provided in this section, any record of the arrest of any person, other than a juvenile, except a record erased pursuant to chapter 961a, shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210, except that disclosure of data or information other than that set forth in subdivision (1) of subsection (b) of this section shall be subject to the provisions of subdivision (3) of subsection (b) of section 1-210. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested. (Emphasis supplied.)

(b) For the purposes of this section, "record of the arrest" means (1) the name and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) at least one of the following, designated by the law enforcement agency: The arrest report, incident report, news release or other similar report of the arrest of a person.

13. Based on the complainant's October 2, 2012 amendment, it is found that the complainant's amended appeal does not desire to have the Commission adjudicate the respondents' claim of exemption pursuant to §1-215, G.S., concerning the redaction of information other than the names and addresses of individuals who have been arrested.

14. It is therefore found that, at this time, the complainant is only requesting the the names and the addresses of individuals who have been arrested and who are mentioned in the records described in paragraph 3, above. It is concluded that the redaction of other information contained in these records is no longer at issue in this case.

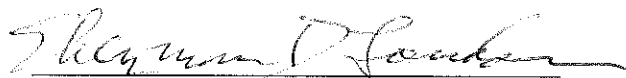
15. It is found that, to the extent that the respondents have redacted from the forty-pages previously provided to the complainant the name or address of any arrested individual, such information should now be provided to the complainant pursuant to §1-215(b)(1), G.S.

16. It is found that, to the extent that the respondents failed to disclose the information described in paragraph 15, above, they violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

17. Finally, the complainant has reiterated in his October 2, 2012 amendment that he is not seeking the names and addresses of persons whose charges were erased at the time of his underlying request. (See ¶ 6, above). It is found that, based on the evidence submitted to the Commission at the October 20, 2009 contested case hearing, the respondents are not claiming that the passage of time will affect their determination of what records are deemed erased pursuant to the Connecticut's erasure statute. See October 20, 2009 Transcript, at 63).² The respondents have been consistent in their position that only those records that were erased as of the date the complainant tendered his request for records will be deemed "erased" and thus exempt from disclosure. Because the parties are in accord on this issue no additional findings or conclusions are required of the Commission.

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 to the complainant the records described in paragraph 3 of the findings, above, and shall not redact from such records the name or the address of any individual who has been arrested, except for those names and addresses pertaining to records that were erased at the time of the complainant's request. Other redactions in the records described in paragraph 3 of the findings, above, may remain in the records.



Commissioner Sherman D. London
as Hearing Officer

FIC2009-325/HOR/VDH/3/13/2013

² "[Witness for Respondents]; he may get records that are now erased but were not at the time [of his request]. . . . [We are not contending that we] stalled for a year [and] now they're erased, and we don't have to give them to you. We're not claiming that."