



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

Edward Peruta,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-423

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

May 12, 2014

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, May 28, 2014**. 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 May 20, 2014**. 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 May 20, 2014**. **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 May 20, 2014**, 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: Edward Peruta
Steven M. Barry

2014-05-12/FIC# 2013-423/Trans/wrbp/TCB//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Edward Peruta,

Complainant

against

Docket #FIC 2013-423

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

Respondents

May 12, 2014

The above-captioned matter was heard as a contested case on February 3, 2014, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. For purpose of hearing, the above-captioned matter was consolidated with Docket #FIC2013-422, Edward Peruta v. Reuben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection;

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 e-mail dated June 26, 2013, the complainant made a request for access to inspect the following:

All electronically generated and hard copy public records, (specifically regular and overtime payroll records), for sworn members of your department, (between December 15, 2012 and present), who were assigned to victim(s) families or their residences following the incident at Sandy Hook Elementary School in Newtown, CT on December 14, 2012. This request is made to determine the specific

number of personnel assigned to these specific details, together with the cost(s) of providing sworn personnel for private duty type security details following the Newtown incident on December 14th 2012.

3. By e-mail dated July 10, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly comply with his request for access to inspect the requested public records. The complainant requested the imposition of a civil penalty.

4. 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.

5. 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 . . . Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.

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

7. At the hearing on this matter, the respondents testified and it is found that:

- a. on July 14, 2013, the respondents' legal division received the complainant's request;
- b. the respondents' legal division immediately sent a request to the division of field operations for assistance in responding to the request;
- c. by letter dated July 16, 2013, the respondents' legal division informed the complainant that his request had been received;

- d. on July 17, 2013, the respondents' legal division sent a request to the human resources division for records responsive to the complainant's request;
- e. on October 15, 2013, the respondents' legal division sent a reminder to the human resources division;
- f. on December 26, 2013, the respondents' legal division sent another reminder to the human resources division;
- g. on December 27, 2013, the respondents' legal division and the field operations division worked together to resolve the miscommunication between that legal division and the human resources division which confusion the human resources division claimed to have regarding the complainant's request;
- h. on January 2, 2014, the legal division received the records responsive to the complainant's request, however review of the records for possible exceptions or exemptions did not occur until later in the month;
- i. the legal division understood the complainant's request to be limited to the payroll data and that it did not become clear that the request included the names of the officers assigned to that security detail until January 27, 2014; and
- j. as of the date of the hearing in this matter, the respondents had not provided the complainant with any of the records responsive to his request because they were conducting another review in light of the recent clarification described in paragraph 7i, above.

8. At the hearing on this matter, the complainant claimed that the respondent department's policy and procedures regarding FOI Act requests caused it to unduly delay compliance with his requests for access to public records and thereby denied him prompt access to the records in violation of the FOI Act. The complainant asserted that had the respondents permitted him to make his requests directly to the division(s) that maintain the records he would have had access to inspect the records sooner.

9. With respect to prompt compliance to a records requests, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion # 51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its

responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

10. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; 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 the loss of the personnel time involved in complying with the request.

11. At the hearing on this matter, the respondent department contended that it did not unduly delay compliance with the complainant's request, in part, because between July 17, 2013 and October 15, 2013 the legal division was working to settle a FOI complaint that was filed against it that involved a very voluminous records request and that it continued to respond to the over 1050 other records requests it received during 2013, 38 of which were filed by the complainant. The respondents also contended that, because the legal division is staffed by only four people who also are responsible for handling all of the legal work of the respondent department, its compliance was prompt under the circumstances.

12. It is found that nothing in the FOI Act prohibits any agency from delegating the responsibility of responding to and complying with FOI requests to a specific employee or employees and such delegation does not inherently deny prompt access to inspect or to receive copies of public records.

13. It is found that, in this case, the respondent department is an extremely large agency with several divisions and to ensure that the disclosure laws, including exceptions and exemptions, are accurately and consistently applied, its policy is that all FOI Act requests be handled through the legal division.

14. It is found that the respondents are entitled to ensure that there were no exemptions applicable to the requested records.

15. It is found that the legal division received the complainant's request on July 17, 2013 and made every reasonable effort to obtain the records responsive to the complainant's request from the appropriate divisions within the respondent department. It is found that the legal division was insufficiently staffed to complete the other agency business and respond to the complainant's requests sooner.

16. It is found, therefore, that, in this case, the respondent department did not unduly delay compliance with the complainant's request and consequently, the respondents did not violate the disclosure provisions of §1-210(a), G.S., in this regard.

17. The respondents represented that they will provide the complainant with the requested information except that they would not provide the name of any police officer who was also on an undercover assignment in which the case involving that assignment was still pending in court. The respondents claimed that the disclosure of those names would endanger the officers and jeopardize their undercover activities and that such information is, therefore, exempt from disclosure pursuant to §1-210(b)(3)(C), G.S.

18. Section 1-210(b)(3)(C), G.S., provides that nothing in the FOI Act shall require the disclosure of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... information to be used in a prospective law enforcement action if prejudicial to such action...

19. It is found that the requested list of names was not compiled in the detection or investigation of a crime but rather was compiled to track which officers provided personal security for the families for payroll purposes.

20. Furthermore, it is found that while the list of names requested by the complainant may include names of officers who also had an undercover assignment, the respondents failed to prove that disclosure of that list would inevitably disclose which of those officers had an undercover assignment.

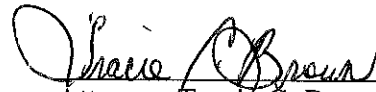
21. It is concluded, therefore, that the requested list of names are not exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., and that the respondents are in violation of the disclosure provisions of §1-210(a), G.S., for withholding the list of names.

22. Notwithstanding the conclusion in paragraph 21, above, the complainant's request for a civil penalty will not be considered.

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 access to inspect or in lieu thereof, with a copy, of all and all unredacted records that are responsive to his request, including the list of names.

2. Henceforth, the respondents shall strictly comply with the disclosure provisions of §1-210(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer

FIC2013-423/hor/act/20140218