



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Edward Peruta,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-463

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

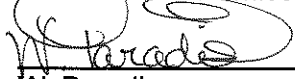
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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
Terrence M. O'Neill, AAG

2014-05-12/FIC# 2013-463/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 2013-463

Reuben Bradford, Commissioner,
State of Connecticut, Department
of Emergency Services and Public
Protection; and 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 March 5, 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 #FIC2013-495, Edward Peruta v. Reuben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; Paul Mounts, Supervisor, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police; and State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police; and Docket #FIC2013-499, Edward Peruta v. Reuben Bradford, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; Paul Mounts, Supervisor, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police; and State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police.

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 July 24, 2013, the complainant made a request to the respondent commissioner requesting "prompt access to any and all lists used by [the respondent department] for the distribution of PRESS/MEDIA releases sent out by [the] Public Information Unit ... [including but not limited to] any e-mail addresses and

fax numbers on file and used by [the respondent department] to distribute information to media organizations.” The complainant indicated that he had a “pressing deadline” and requested the records be made available promptly upon his arrival. It is found that the e-mail was sent at 5:12 p.m.

3. It is found that on July 25, 2013, the complainant appeared at the respondent department’s office building at approximately 8:39 a.m. intending to inspect the requested records. It is found that the respondent’s office opens at 8:30 a.m.

4. It is found that the complainant had a confrontational verbal exchange with the State Trooper who was serving as security at the front desk during which he informed that State Trooper that he was there to inspect records pursuant to the request described in paragraph 2, above, and that he was permitted, under the law, to simply appear at a public agency to inspect public records.

5. It is found that notwithstanding the complainant’s assertions, he was asked to wait in the foyer of the building while the State Trooper made a call to the respondent department’s legal affairs unit.

6. It is found that, thereafter, a member of the legal affairs unit met the complainant in the foyer and attempted to assist him, however, the complainant would not cooperate with her and insisted on speaking with Christine Plourde, an attorney with the respondent department, or Lieutenant Vance, the Public Information Officer with whom he had already been in contact regarding his request.

7. It is found that by all accounts, the complainant became increasingly frustrated, impatient and even raised his voice insisting that he had a right to prompt access to the records he sought. It is found that the situation escalated to the point that the complainant was threatened with arrest.

8. It is found that at some point Attorney Plourde arrived and was brought into the conversation. It is found that upon assessing the situation she told the complainant that he needed to make an appointment. It is found that upon hearing that, the complainant left the building.

9. By e-mail dated and filed July 25, 2013, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information Act by failing to comply with his request for prompt access to inspect public records and requiring him to make an appointment. The complainant requested that a civil penalty be imposed against the respondent commissioner.

10. Thereafter, and notwithstanding the events described in paragraphs 3 through 8, above, it is found that the complainant was provided with a copy of the requested records on July 26, 2013 by the respondent department’s public information officer and again, on July 31, 2013 by a staff member of the respondent department’s legal unit.

11. With respect to the complainant's allegations, §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.

12. 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....

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

14. At the hearing on this matter, the complainant contended that he should have been permitted to enter the building, make his request, and then been provided with the access he requested. The complainant also contended that the respondents should not have required him to make an appointment. He also contended that his e-mail was simply a courtesy and that because he was not required to put his request to inspect records in writing at all, the fact that he sent the e-mail after business hours is immaterial.

15. Notwithstanding the complainant's contentions described in paragraph 14, above, he limited his complaint in this matter to the respondents allegedly "denying him access to make his request directly to the respondent department's public information officer."

16. However, it is found that nothing in the FOI Act requires an agency to permit access to floors or offices in its building and such access is not inherent in the right to prompt access to inspect or to receive copies of public records.¹

¹ See Docket #FIC 2003-054; Edward A. Peruta v. Rock Regan, Chief Information Officer, State of Connecticut, Department of Information Technology; and Nuala Forde, Communications Director, State of Connecticut, Department of Information Technology; and Docket #FIC 2003-079; Edward A. Peruta v. Rock Regan, Chief Information Officer, State of Connecticut, Department of Information Technology; and Nuala Forde, Communications Director, State of Connecticut, Department of Information Technology. (In both cases, the complainant made the same allegation described in paragraph 15, above, to which this Commission found as it did in paragraph 16, above.)

17. It is also found that nothing in the FOI Act requires an agency to permit access to particular employees for the purpose of submitting a FOI request and such access is not inherent in the right to prompt access to inspect or to receive copies of public records.

18. Consequently, it is concluded that with respect to the allegation described in paragraph 15, above, the complainant failed to allege a violation of the FOI Act.


19. Furthermore, it is found that, even though the public has a right to access public records during regular office or business hours (without the courtesy of an advance written request), under the facts and circumstances of this case, specifically those described in paragraphs 4 through 8, above, the respondents acted reasonably in order to deescalate what had become a volatile situation.

20. Under the facts and circumstances of this case, the Commission will not address the complainant's allegations any further.

21. Under the facts and circumstances of this case, the Commission declines to consider the complainant's request for the imposition of a civil penalty.

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 with prejudice.



Attorney Tracie C. Brown
as Hearing Officer