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James Torlai,
Complainant(s)
against

Commissioner, 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,
Respondent(s)

Notice of Meeting

Docket #FIC 2013-408

May 23, 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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, June 11, 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 30, 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 30, 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 30, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: James Torlai
Terrence M. O'Neill, AAG

2014-05-23/FIC# 2013-408/Trans/wrbp/GFD//CAL

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by | Report of Hearing Officer

James Torlai,

Complainant

against | Docket #FIC 2013-408

Commissioner, 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,

Respondents | May 23, 2014

The above-captioned matter was heard as a contested case on April 3, 2014, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, the above captioned matter was consolidated with Docket #FIC 2013-433, James Torlai v. Commissioner, 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 letter dated June 2, 2013, the complainant requested that the respondents provide him with copies of "information related to all DUI arrests made" or "processed by L-troop" during the month of May 2013. It is also found that the complainant specifically requested the "name and address of the person arrested, a list of all charges, and a report of the arrests." It is further found that the complainant requested "copies of all test results related [to] the DUI charges . . . . [including] breath test results, urine test results and any blood test results" (hereinafter the "requested records").

3. It is found that, by letter dated June 5, 2013, the respondents' Legal Affairs Unit, acknowledged receipt of the complainant's request described in paragraph 2, above, and informed the complainant that they would review and process his request "in accordance with the provisions of the Freedom of Information Act."

4. By letter of complaint dated July 1, 2013 and filed July 3, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide all of the records described in paragraph 2, above.

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

7. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is found that the respondents maintain the requested records, 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 thereof, are exempt from disclosure.

9. It is found that the complainant requested three categories of responsive records pertaining to the May 2013 DUI arrests described in paragraph 2, above, consisting of: (i) a case incident report; (ii) records disclosable under §1-215, G.S., containing the names and addresses of the persons arrested along with the date and time of each arrest; and (iii) DUI test result records.

10. At the hearing on the matter, the complainant contended that, while the respondents provided him with May 2013 arrest records disclosable under §1-215, G.S., the respondents were not prompt in providing such records. The complainant also

contended that the respondents did not provide him with a copy of a responsive case incident report and the DUI test result records required to be disclosed under §14-227i, G.S.

11. With respect to the complainant's claim that the respondents failed to provide him with a copy of the case incident report related to the May 2013 arrests, it is found that a case incident report is created by staff of the respondents' Legal Affairs Unit after inputting specific search criteria into the respondents' computer system.

12. It is found, and the complainant conceded, that at the time of his request described in paragraph 2, above, a responsive case incident report related to all DUI arrests "made" or "processed by L-troop" during the month of May 2013 did not exist. It is also found, and the complainant conceded, that at the time of his request described in paragraph 2, above, he knew that the respondents would have to create the case incident report for May 2013 in order to comply with his request.

13. Nevertheless, it is found that on March 18, 2014, in an effort to assist the complainant, a paralegal in the respondents' Legal Affairs Unit (hereinafter the "paralegal") requested that another staff member create a case incident report in response to the complainant's request described in paragraph 9.i, above, and a provided copy of such record to the complainant at the hearing on this matter.

14. It is concluded that because the FOI Act does not require a public agency to create records in response to a request, the respondents did not violate the FOI Act with respect to the records described in paragraph 9.i, above.

15. With respect to the complainant's request for the DUI test result records described in paragraph 9.iii, above, the complainant contended that while he believes that the respondents are not required to provide him with copies of such records under the FOI Act if the person arrested has not been convicted of the alleged DUI violation, such DUI test result records are disclosable to the public under §14-227i, G.S.[1]

16. At the hearing on this matter, the respondents claimed that the DUI test result records described in paragraph 9.iii, above, are exempt from disclosure pursuant to §1-215, G.S. The respondents also claimed that the complainant is not entitled to copies of such test result records pursuant to §14-227i, G.S., because the complainant is not a person injured in an accident caused by the alleged DUI violation under §14-227a, G.S., is not a party to a claim or proceeding related to the alleged DUI violation, or the legal representative of any such person or party.

17. With regard to the respondents' claim that the test result records are exempt from disclosure pursuant to §1-215, G.S., the Commission notes that it previously has

[1] Although during the hearing on this matter, the complainant stated he agreed with the respondents that the requested DUI test result records, described in paragraph 9.iii, above, are exempt under §1-215, G.S., while the criminal cases are pending, the Commission disagrees. See paragraphs 17 through 19, of this decision.

ruled that such test results are not exempt from disclosure under that provision. See James Torlai v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police, Docket #FIC 2011-285 (March 28, 2012); James Torlai v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police, Docket #FIC 2009-770 (October 13, 2010). See also Stephanie Reitz and the Associate Press v. Commissioner, State of Connecticut, Department of Public Safety, Division of State Police, Docket #FIC 2010-091 (January 13, 2011)(concluding that §1-215, G.S., does not create an exemption to disclosure for mug shots).[2]

18. The Commission notes further that the issue of whether §1-215, G.S., creates an exemption to disclosure or whether it merely sets forth the minimum information that must be disclosed at the time of arrest, is currently on appeal at the Supreme Court. See Commissioner, State of Connecticut, Department of Public Safety v. FOIC, SC 19047 (briefed and argued, pending decision). However, pending the final resolution by the Supreme Court, the Commission maintains that its interpretation of §1-215, G.S., as setting forth the minimum required information at the time of arrest, is correct.

19. Accordingly, it is concluded that the respondents violated the FOI Act by withholding the requested test result records described in paragraph 9.iii, above, from the complainant.

20. Based on the conclusion in paragraph 19, above, it is not necessary for the Commission to address the complainant's claim that the records are disclosable under §14-227i, G.S.

21. With regard to the records described in paragraph 9.ii, above, it is found that on April 3, 2014, which was the day of the hearing in this matter, the complainant withdrew his request for responsive records of one juvenile that were withheld from him by the respondents. It is also found that, during such hearing, the respondents provided the complainant with the remaining two records disclosable under §1-215, G.S.

22. With regard to the claim that the records described in paragraph 9.ii, above, were not provided to him promptly, it is found that, monthly, the complainant requests DUI arrest records from the respondents, and that, therefore, the respondents developed a system specific to responding to the complainant's monthly requests.

23. It is found that the complainant's June 2, 2013 request described in paragraph 2, above, was initially assigned to the manager of the respondents' Legal Affairs Unit. It is found that during the summer through fall of 2013, the Legal Affairs Unit manager was primarily responsible for completing the Sandy Hook Elementary School shooting report, due December 2013, and that such task affected her ability to respond to the FOI request

[2] The orders of the Commission to disclose the records at issue in these cases are stayed, pending the Supreme Court's decision in Commissioner, State of Connecticut, Department of Public Safety v. FOIC, SC 19047. See paragraph 18, of this decision.

at issue herein. It is further found that, sometime in July or August of 2013, the manager reassigned the task of responding to the complainant's June 2, 2013 request to the paralegal.

24. It is found that during the pendency of the complainant's June 2, 2013 request, the respondents' paralegal sent copies of responsive records to the complainant on November 1, 2013, December 3, 2013, and March 26, 2014, after the paralegal located, reviewed and determined the disclosability of the responsive records.

25. The respondents' witness, the paralegal in the Legal Affairs Unit, testified credibly about the thoroughness of her search for the responsive records, described in paragraph 2, above, as well as her efforts to review the records to determine whether to disclose information contained therein. It is found that her search was diligent.

26. The Commission is sympathetic to the respondents' challenges and is aware that the complainant has made many requests for the respondents' DUI records. Accordingly, it is found that the delay in providing the remaining disclosable records was reasonable under the facts and circumstances of this case.

27. Accordingly, it is concluded that the respondents did not violate the FOI Act by failing to provide all of the disclosable records, that the complainant requested in a prompt manner.

The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

2. Furthermore, the respondents shall provide the complainant with copies of the DUI test result records described in paragraph 9.iii, above, free of charge.

3. Enforcement of paragraph 2 of the order is stayed until resolution of the appeal of the Memorandum of Decision in Commissioner of Public Safety v. Freedom of Information Commission, et al. (SC 19047) (2014).

Gregory F. Daniels
as Hearing Officer

FIC2013-408/hor/gfd/05232014