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FREEDOM OF INFORMATION



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Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-479

Chief, Police Department, Town of Montville;
and Police Department, Town of Montville,
Respondent(s)

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, 1st 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: Robert Cushman
Ryan W. Jaziri, Esq.

2014-05-23/FIC# 2013-479/Trans/wrbp/TCB//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Robert Cushman,

Complainant

against

Docket #FIC 2013-479

Chief, Police Department, Town
of Montville; and Police Department,
Town of Montville,

Respondents

May 23, 2014

The above-captioned matter was heard as a contested case on March 4, and May 1, 2014, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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 July 25, 2013, the complainant made a request to the respondents for certain records.
3. It is found that by letter dated August 5, 2013, the respondents informed the complainant that his request had been received and that once the records had been determined to be in existence and whether any exemptions applied, he would be contacted.
4. By letter dated August 5, 2013, the complainant appealed to this Commission alleging that the respondents had denied him access to the requested records and asked that the Commission order their immediate disclosure and any other relief deemed appropriate by the Commission.
5. At the March 4, 2014 hearing on this matter, the parties agreed to limit the complaint to the disclosure of the following records:

- a. copies of A44 reports from January 31, 2013 to the present;
- b. copies of the records related to nollied cases for which the 13 month period has not expired from January 31, 2013 to the present; and
- c. access to inspect summons forms from January 31, 2013 to the present.

6. 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.

7. 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.

8. 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."

9. It is found that the requested records described in paragraph 5, above, are a public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. It is found that the March 4, 2014 hearing was continued to give the respondents an opportunity to compile, and provide the complainant with access to inspect and/or receive copies of, the records described in paragraph 5, above. The complainant indicated that if the respondents provided the requested records he would withdraw his complaint.

11. It is found, however, that the respondents did not provide the complainant with access to inspect or receive copies of the records described in paragraph 5, above, and the May 1, 2014 hearing was held.

12. At the hearing on this matter, the respondents contended first that it was more appropriate for the complainant to make his request for the records described in paragraph 5a, above, to the State Police because: the Town of Montville's police force is under the jurisdiction of the State Police; the records were originally generated by the State Police; and finally, §29-10b, G.S., requires that the Commissioner of DESPP charge a 16 dollar fee for copies of such records which requirement would be circumvented if the town were to provide those same records at 50 cents per page.

13. It is found that the town of Montville participates in the State of Connecticut's Resident State Trooper program.

14. This Commission takes administrative notice of the State of Connecticut's Resident State Trooper Program in which a State Trooper provides police services to a town pursuant to a contract between that town and the State of Connecticut. This Commission also takes administrative notice that the resident state trooper that serves the town of Montville supervises the operational aspect of the town's police department which has 24 police officers with the mayor serving as the police chief and a police lieutenant serving as the administrative head.

15. It is found that while the resident state trooper is still a member of the state police department, that relationship does not bring the town of Montville or its police department under the "jurisdiction" of the state police department for purposes of compliance with the FOI Act.

16. It is also found that while the A44 form was originally created by the state police department, the Montville police department completes and maintains the form as part of its police department functions.

17. It is also found that there is nothing in §29-10b, G.S., that precludes the respondents from disclosing the requested records under the provisions of the FOI Act.

18. Consequently, it is found that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to comply with the complainant's records request described in paragraph 5a, above.

19. At the hearing on this matter, the respondents explained that the delay in providing the complainant with a copy of the records described in paragraph 5b, above, resulted from a failure to fully understand how to conduct an accurate search to determine which nollied cases that fell within the scope of the complainant's request had actually been erased and that when they learned that it was better to seek the court for assistance, several weeks after the March 4, 2014, hearing had already passed.

20. At the hearing on this matter, the respondents indicated that they had only recently received an accurate list from the court of the nollied cases that had been erased and would be prepared to provide the complainant with the records related to the non-erased cases at some time shortly after the hearing.

21. With respect to the records described in paragraph 5c, above, it is found that the respondents realized only after the first hearing in this matter, that the summons requested by the complainant would also be subject to the erasure provisions and therefore, those documents would have to be reviewed to extract only the non-erased summons for the complainant's review. However, that task had not been performed at the time of the May 1, 2014 hearing in this matter.

22. It is found that while the respondents have made considerable efforts to comply with the complainant's request since the March 4, 2014 hearing, they seem to be unable to explain what took place between the time the complainant made his request on August 5, 2013 and the March 4, 2014 hearing.

23. It is concluded, therefore, that the respondents unduly delayed compliance with the complainant's request.

24. Consequently, it is concluded that the respondents violated the promptness provision of §§1-210(a) and 1-212(a), G.S.

25. At the hearing on this matter, the parties agreed to extend the scope of the complainant's request to August 5, 2013 through May 1, 2014 since, as a result of the respondents' delay in compliance, many of the records the complainant originally sought are now subject to the erasure statute and cannot be disclosed.

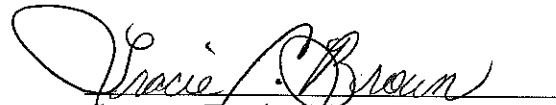
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall, forthwith, provide the complainant with a copy of the following records, free of charge:

- a. copies of all non-erased A44 reports from January 31, 2013 to May 1, 2014; and
- b. copies of the records related to non-erased nollied cases for which the 13 month period has not expired from January 31, 2013 to May 1, 2014.

2. The respondents shall forthwith provide the complainant with access to inspect all non-erased summons forms from January 31, 2013 to May 1, 2014, and to the extent he desires copies of any of those records, the respondents shall provide those copies free of charge.

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



Tracie C. Brown
Attorney Tracie C. Brown
as Hearing Officer

FIC2013-479/hor/tcb/20140522