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FREEDOM OF INFORMATION



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James Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-577

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)

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: James Torlai
Terrence M. O'Neill, AAG

2014-05-23/FIC# 2013-577/Trans/wrbp/KKR/CAL

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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 2013-577

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 May 7, 2014 at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2013-589, 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 September 5, 2013, the complainant requested from the respondents records related to all DUI arrests made, or processed during, the month of August 2013 by Troop L. Specifically, the complainant requested the following “required 1-215 information”:
 - (a) the name and address of the person arrested or processed; the charges, date, time, and place of the arrest; an arrest report, incident report, press release or other report of the arrest;
 - (b) copies of all breath or urine test results related to these arrests;

(c) a “case incident report” listing these arrests.¹

3. It is found that, by letter dated September 10, 2013, the respondents acknowledged receipt of the request, described in paragraph 2, above, and informed the complainant that they would review and process his complaint “in accordance with the provisions of the Freedom of Information Act.”

4. By letter of complaint dated September 23, 2013 and filed September 26, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the requests for 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 “[a]ny 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 records responsive to the request, described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, by letters dated February 10 and February 28, 2014, the respondents provided the complainant with copies of certain records responsive to the requests, described in paragraphs 2(a) and 2(c), above. However, it is also found that the respondents withheld a press

¹ Both the complainant intended, and the respondents understood, this to be a request for a list, by case incident number, of DUI arrests that occurred during the relevant time period.

release pertaining to one of the arrests, as well as all test result records responsive to the request described in paragraph 2(b), above.

10. At the hearing in this matter, the complainant contended that the respondents violated the FOI Act by failing to promptly provide him with a copy of one press release; and by improperly withholding from him the test results pertaining to arrests that are currently pending. In addition, the complainant contended that some of the press releases that were provided in response to his request failed to comply with the requirements of §1-215, G.S., in violation of the FOI Act's disclosure requirements.

11. With regard to the press release, it is found that, although it was initially withheld, such press release was provided to the complainant by the respondents with their February 28th letter, described in paragraph 9, above.

12. At the hearing in this matter, the respondents' witness testified that the press release was initially not provided to the complainant with their February 10th letter because they mistakenly believed that the charges in that case had been erased. It is further found, however, that upon further review, the press release was determined to be discloseable, and was then provided to the complainant.

13. Based upon the facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act, with respect to the press release described in paragraphs 9, 11, and 12, above.

14. With regard to the press releases that were provided to him in response to the request, described in paragraph 2(a), above, the complainant claimed, at the hearing in this matter, that some of those press releases do not comply with the requirements of §1-215, G.S., because, in his opinion, such records fail, for example, to describe in sufficient detail, the circumstances of the arrest.² According to the complainant, because such records do not comply with §1-215, G.S., this Commission has the authority to order the respondents to provide a copy of the police incident report for each arrest.

15. Section 1-215, G.S., provides, in relevant part:

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...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

² According to the complainant, the respondents are required by §1-215, G.S. to provide to the public a detailed description of the arrest which would include, for example, a statement that the reason the person was pulled over was because he or she was seen driving erratically.

provisions of subdivision (3) of subsection (b) of section 1-210....

(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.

16. It is found that the records provided to the complainant in response to the request described in paragraph 2(a), above, include the minimum information required to be provided at the time of arrest under §1-215, G.S. Accordingly, it is concluded that the respondents did not violate the FOI Act with respect to these records. The Commission notes that the majority of the records provided to the complainant in response to the request, described in paragraph 2(a), above, do, in fact, contain more detail concerning the circumstances of the arrests than what was contained in the one or two records singled out by the complainant as deficient. However, it is not the Commission’s role to require the respondents to create a more detailed record in this case, where it has been found that the records provided contain the information required by §1-215, G.S., or to order disclosure of the police incident reports, where such reports were not specifically requested by the complainant.

17. With regard to the request for the test results, described in paragraph 2(b), above, the complainant contended that the respondents are required by §14-227i, G.S., to provide him with copies of such records. Alternatively, the complainant claimed that such records are public records, and that no exemption applies to them. Therefore, the complainant argued, the respondents violated the FOI Act by withholding them.

18. At the hearing in this matter, the respondents claimed that the test result records are exempt from disclosure pursuant to §1-215, G.S. However, the Commission notes that it previously has 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).³

19. 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

³ 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 21, of this decision.

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.

20. Accordingly, it is concluded that the respondents violated the FOI Act by withholding the requested test result records from the complainant.

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

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

1. Forthwith, the respondents shall provide a copy of the test result records, described in paragraph 2(b), above, to the complainant, free of charge.
2. Enforcement of paragraph 1 of the order, above, is stayed until resolution of the appeal in Commissioner, State of Connecticut, Department of Public Safety v. FOIC, SC 19047.



Kathleen K. Ross
as Hearing Officer