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# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission · 18-20 Trinity Street, Suite 100 · Hartford, CT 06106  
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Isaac Avilucea, Andy Thibault and the  
Torrington Register Citizen,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-775

Dora Schiriro, Commissioner, State of Connecticut, Department  
of Emergency Services and Public Protection; Lt. Paul Vance,  
State of Connecticut, Department of Emergency Services and  
Public Protection; and State of Connecticut, Department of  
Emergency Services and Public Protection  
Respondent(s)

October 8, 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, October 22, 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 October 15, 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 October 15, 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 October 15, 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: Isaac Avilucea, Andy Thibault  
Terrence M. O'Neill, Esq.

2014-10-08/FIC# 2013-775/Trans/wrbp/MS/PSP/LFS

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Isaac Avilucea,  
Andy Thibault and the  
Torrington Register Citizen,

Complainants

Docket # FIC 2013-775

against

Dora Schriro, Commissioner, State of  
Connecticut, Department of Emergency  
Services and Public Protection; Lt. Paul Vance,  
State of Connecticut, Department of Emergency  
Services and Public Protection; and State of  
Connecticut, Department of Emergency  
Services and Public Protection,

Respondents

October 8, 2014

The above-captioned matter was heard as a contested case on July 30, 2014, at which time the complainants and 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. It is found that on November 22, 2013, the complainant Isaac Avilucea made an oral request to the respondents' Canaan police barracks Troop B for a copy of a police report relating to a November 16, 2013 incident involving a domestic dispute between Newtown police officer John Cole and his wife at the Interlaken Inn ("November 16<sup>th</sup> incident"). It is found that Mr. Avilucea was told to make an official records request to state police headquarters for copies of the police report. Subsequently, on or about November 23, 2013, Mr. Avilucea telephoned, and later emailed, respondent Lieutenant Paul Vance and requested that the respondents promptly provide him with copies of such police report and other information pertaining to the November 16<sup>th</sup> incident.

3. It is found that, upon receiving Mr. Avilucea's records request, described in paragraph 2, above, Lieutenant Vance forwarded such request to the respondents' Legal Affairs Department which was responsible for handling Freedom of Information ("FOI") requests.

4. It is found that, by letter dated November 25, 2013, the respondents' Legal Affairs Department informed Mr. Avilucea that his records request described in paragraph 2, above, had been referred to such department for review and would be processed in accordance with the FOI Act and any other applicable provision of law.

5. By letter filed on December 13, 2013, the complainants appealed to this Commission, alleging that the respondents failed to promptly provide copies of the records, described in paragraph 2, above, in violation of the FOI Act. At the hearing, the police report was the only record at issue. Further, in addition to other relief, the complainants requested the assessment of civil penalties against the respondents.

6. Section 1-200(5), G.S., defines "public records or files" as:

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 . . . (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 "any 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 police report requested by the complainants is a public record and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless it is exempt from disclosure.

10. It is found that an arrest was made in connection with the November 16<sup>th</sup> incident, described in paragraph 2, above, and that, at the time of Mr. Avilucea's November 22<sup>nd</sup> request, the respondents' criminal investigation of such incident was pending.

11. It is found that a copy of a press release relating to the November 16<sup>th</sup> incident was available to the public, including the complainants, approximately a day after the incident.

12. It is also found that, in April 2014, approximately four months after Mr. Avilucea made his records request for the police report, the respondents provided him with a copy of such report. It is further found that the criminal investigation of the November 16<sup>th</sup> incident was still pending at the time that the respondents provided Mr. Avilucea with a copy of the police report.

13. At the hearing, the complainants maintained that the respondents failed to provide Mr. Avilucea with copies of the police report “promptly” and that the production of such report four months after he made his records request was inadequate. Mr. Avilucea testified that the police report was available at the time of his request and should have been provided immediately. In addition, Mr. Avilucea testified that a competing news organization received preferential treatment and was provided with the requested police report on or about the time of the filing of the complainants’ complaint with the Commission.

14. The respondents argued that the release of the police report at issue was entirely within the discretion of the respondents. They relied on recent court decisions holding that law enforcement agencies’ disclosure obligations under the FOI Act during pending prosecutions remain exclusively governed by §1-215, G.S. See Commissioner of Public Safety v. Freedom of Information Commission, et. al., 312 Conn. 513, 545 (2014) *affirming* Commissioner of Public Safety v. Freedom of Information Commissions, et. al., 137 Conn. App. 307 (2012).

15. Conn. Gen. Stat. §1-215, G.S., provides, in relevant part:

(a) 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, other than a juvenile, except a record erased pursuant to chapter 961a, 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 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. In Commissioner of Public Safety v. Freedom of Information Commission, et. al., a request was made for access to a police report concerning the arrest of an individual who was charged with assault and attempted murder in connection with an incident that had occurred in Derby, CT. The Department of Public Safety denied the request claiming that the entire police report was exempt from disclosure pursuant to §1-215, G.S, and provided the requester with only a copy of a press release. After an administrative hearing, the Commission concluded that the Department had violated the FOI Act. The Department then appealed. On appeal, the Commission asserted that §1-215, G.S., required the disclosure of “the record of arrest” and that, if an agency sought to withhold other police records, it must establish that such records were exempt from disclosure pursuant to the provisions of §1-210(b)(3), G.S.<sup>1</sup> The Court, however, found that the Department’s disclosure of the press release to the requester satisfied the requirements of §1-215, G.S., and that the Department was not obligated to make the full police report available during the pending criminal prosecution. The Court held that while a criminal prosecution is pending, §1-215, G.S., requires only that the Department of Public Safety disclose basic “police blotter” information about the arrest (*i.e.*, 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 either an arrest report, incident report, news release or other similar report of the arrest, designated by the agency.

17. In the instant matter, there was no claim that the respondents failed to provide the complainants with basic “police blotter” information or that the press release, described in paragraph 11, above, did not contain a narrative sufficiently meaningful to satisfy the respondents’ obligations under §1-215, G.S. Rather, the complainants sought the complete copy of the arrest report pertaining to the November 16<sup>th</sup> incident, which matter was the subject of a pending criminal investigation.

18. Under the facts and circumstances of this case and based on the recent court decisions, it is concluded that the respondents were not required to provide a copy of the requested police report until the pending investigation and any criminal prosecution pertaining to such matter were resolved.

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<sup>1</sup> Section 1-210(b)(3), G.S., provides that:

(b) Nothing in the Freedom of Information Act shall be construed to require disclosure of... [r]ecords 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 (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses, (D) information to be used in a prospective law enforcement action if prejudicial to such action, (E) investigatory techniques not otherwise known to the general public, (F) arrest records of a juvenile, which shall also include any investigatory files, concerning the arrest of such juvenile, compiled for law enforcement purposes, (G) the name and address of the victim of a sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, or injury or risk of injury, or impairing of morals under section 53-21, or of an attempt thereof, or (H) uncorroborated allegations subject to destruction pursuant to section 1-216....

19. It is therefore concluded that the respondents did not violate the disclosure provisions of the FOI Act. Accordingly, the Commission will not consider the complainants' request for the imposition of civil penalties.

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.



Commissioner Matthew Streeter  
as Hearing Officer