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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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Randall Saunders,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-080

Mayor, City of Danbury; and City of Danbury,
Respondent(s)

December 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, January 14, 2015**. 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 January 2, 2015**. 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 January 2, 2015**. **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 January 2, 2015**, 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: Randall Saunders
Peter Buzaid, Esq.

2014-12-12/FIC# 2014-080/Trans/wrbp/VRP/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Randall Saunders,

Complainant

against

Docket #FIC 2014-080

Mayor, City of Danbury; and
City of Danbury,

Respondents

December 9, 2014

The above-captioned matter was heard as a contested case on November 13, 2014, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 January 7, 2014, the complainant requested from the respondents "the original 911 recordings of January 26, 1997 from Tortilla Flat Restaurant to the E-911 center on New Street in Danbury."
3. It is found that by letter dated January 28, 2014, the complainant followed up his January 7, 2014 request, indicating again that he wanted access to the original 911 recording.
4. It is found that the respondents replied on February 3, 2014 acknowledging receipt of the requests; indicating that they were only required to provide a copy, which the complainant already had; and further stating that the equipment needed to play the 911 tape was no longer operable, and that the tape could not be played on the respondent's current equipment
5. It is found that by letter dated February 9, 2014, the complainant indicated that he had obtained his copy of the 911 tape from the court, not from the respondents, but that he now challenged the authenticity of the copy that had been used as evidence in his trial. (The tape was authenticated at trial, but the complainant nonetheless challenges that authentication.) The complainant therefore requested a "a certified copy of those [original] recordings in whichever format you choose."

6. By letter of complaint filed February 6, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with the record he requested.

7. Section 1-200(5), G.S., defines “public records” as follows:

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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. Section 1-210(a), G.S., provides, in relevant part:

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. .

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

10. Section 1-210(c) provides in relevant part that “A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more.”

11. It is concluded that the requested original 911 tape is a public record within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

12. It is found that the requested 911 tape cannot be played on equipment owned by the respondents.

13. It is found that the respondents provided the original 911 tape to the Connecticut State Police crime laboratory in Meriden to produce a copy of the original tape for the complainant, but that the State Police were unable to do so.

14. It is found that both the respondents and the complainant have located a service in New Jersey that might be able to copy the tape at a cost of approximately \$3,000.00.

15. It is found that the respondents cannot make the requested 911 tape available for inspection within the meaning of §1-210(a)(1), because neither the respondents nor the complainant have the equipment needed to play the tape.

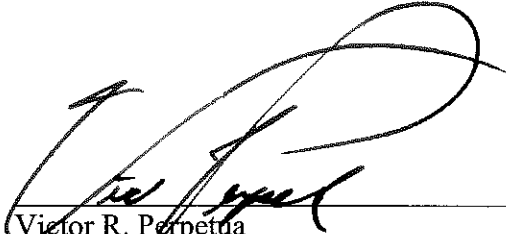
16. It is therefore concluded that the respondents did not violate the FOI Act by failing to make the 911 tape available for inspection.

17. It is found that the copying service in New Jersey might be able to make a copy (depending on the physical condition of the tape, and assuming that the tape in the custody of the respondents is in fact the original 911 tape requested), and that the copying service could presumably certify to the accuracy of the copy it made.

18. It is found, however, that it is not reasonable to require the respondents to arrange for delivery of the original tape to New Jersey, take whatever precautions are needed to safeguard the chain of custody, and make the arrangements for copying, all at their own expense, without reason to expect that the complainant either can, or will, pay for the cost of copying. This is particularly so when the complainant already has a copy of the tape that was authenticated for use at his trial.

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

1. If the complainant wishes for the respondents to arrange for a copy of the original 911 tape to be made by an outside copying service, he shall, within 90 days of the issuance of the final decision in this matter, tender prepayment in the amount of \$3,000.00 to the respondents. Upon receipt of payment, the respondents shall arrange for a certified copy to be made by an outside copying service. The respondents may additionally collect from the complainant any additional costs they necessarily incur in producing a copy, such as the costs of delivery and costs of maintaining the chain of custody. Upon collection of all such costs from the complainant, the respondents shall forthwith deliver the certified copy to him.



Victor R. Perpetua
as Hearing Officer