



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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James Torlai,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2015-385

Commissioner, State of Connecticut,  
Department of Emergency Services and Public  
Protection; and State of Connecticut,  
Department of Emergency Services and Public  
Protection,

Respondent(s)

March 8, 2016

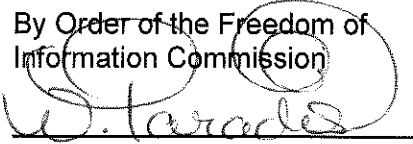
## Transmittal of Proposed Final Decision Dated March 8, 2016

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 dated March 8, 2016, 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, March 23, 2016**. 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 March 16, 2016*. 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 March 16, 2016*. **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 **fifteen (15) copies** be filed *on or before March 16, 2016* 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: James Torlai  
James W. Caley, Esq.

FIC# 2015-385/Trans/wrbp/VDH/CAL/2015-03-08

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FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Revised Report of  
Hearing Officer

James Torlai,

Complainant

against

Docket #FIC 2015-385

Commissioner, State of Connecticut,  
Department of Emergency Services  
and Public Protection; and State of  
Connecticut, Department of Emergency  
Services and Public Protection,

Respondents

March 8, 2016

The above-captioned matter was heard as a contested case on September 22, 2015, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint, and on March 2, 2016, at which time the respondents appeared, presented additional testimony 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, by letter dated April 30, 2015, the complainant requested that the respondents provide him with “copies of all N105 forms filled out or prepared by Bruce LaChance while employed by the State.”
3. It is found that, by letter dated May 5, 2015, the respondents acknowledged the complainant’s request, indicating that they would process the request and notify the complainant as soon as possible about the status of responsive records. It is further found that the respondents informed the complainant that he might be charged a fee in connection with the records he was requesting.
4. By letter dated May 31, 2015 and filed June 4, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the requested 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, (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.

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 requested records are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. It is found that an N105 form is a form that a law enforcement officer uses when he or she has taken possession of a Connecticut driver’s license to operate a motor vehicle. It is further found that the N105 form directs the law enforcement officer who has taken possession of such license to do the following: “Within 24 hours after taking possession of a CT operator’s license, the license and original, signed authorization (N105) must be mailed to the MV Commission, (Driver Services Division), in accordance with DMV Regulation. . . .” It is further found that there is a place on the N105 form for the officer to remark as to whether he or she believes the person whose license has been taken is “unfit” to continue to maintain a license to operate a motor vehicle.

10. It is found that, in this case, the complainant wants each and every N105 form that Officer Bruce LaChance has filled out since the start of his employment with the State of Connecticut, which began late in 2008, through the date of the request, which is April 30, 2015.

11. It is found that when an officer, such as Officer LaChance, completes an N105 form such form becomes a subpart of an overall report. In addition, it is found that an N105 can form a subpart of either an accident report or an investigative report, or can be issued in connection with a simple traffic stop.

12. It is found that there is no automated way for the respondents to search Officer LaChance's reports and that the only way to determine whether Officer LaChance has taken an individual's license and has then been required to complete an N105 form is to hand search each accident and/or investigatory report generated by Officer LaChance, as well as to search each matter involving a simple traffic stop. It is found that a manual hand search is necessary because certain forms, such as the N105, which is a form that originates from the Department of Motor Vehicles, are not available to the respondents electronically. Accordingly, it is found that, while the respondents maintain the core parts of their accident and investigative reports electronically, other parts, such as the N105 forms, are maintained only in hardcopy files. It is found that a complete accident or investigative report is comprised of the electronic portion of the report, as well as all of the records contained in the corresponding hardcopy file, which would include the N105 if one has been prepared.

13. It is found that Officer LaChance generated his first report on or around April 12, 2009. It is further found that, during the relevant time period (that is, April 12, 2009 through April 30, 2015), Officer LaChance has been involved in 4,126 calls for service ("CFS").

14. It is found that the respondents compiled a list of the 4,126 CFSs that involved Officer LaChance. It is found that this list, which is contained on 112 pages, provides the complainant with the following information: the case number, the type of dispatch call, the date, time and place of the incident, and Officer LaChance's unit identification number. It is found that each of the 4,126 CFSs could have involved Officer LaChance removing a driver's license and issuing an N105 form.

15. The complainant contends that the list referred to in paragraph 14, above, does not satisfy his request. The complainant further contends that his request simply requires the respondents to search through the hardcopy files and to copy one form if such form has been generated.

16. The respondents contend that locating the N105 forms is not as easy as the complainant believes it to be. In the first instance, the respondents contend that to hand search each of the 4,126 CFSs to determine whether there is a corresponding accident or investigative report that resulted in the issuance of an N105 form, or a matter involving a simple traffic stop that resulted in the issuance of an N105 form, would take one full-time staff person nine to twelve months working full time, and solely on this request, in order to complete the search. In addition, the respondents contend that they maintain five years of records on site and five years of records off site, with some of the off-site records or files being retained at the individual troop locations. Accordingly, to comply with the complainant's request would require a search of accident and/or investigative reports, and matters involving simple traffic stops, in multiple locations. Finally, and most significantly,

the respondents contend that, because the complainant is requesting a copy of a record that is (or may be) part of an accident and/or an investigatory report, the statutory search and copy fee contained in §29-10b, G.S., is triggered, and, accordingly, the complainant is required to pay \$16.00 for each accident and investigative report searched, whether or not the actual file pertaining to such report contained an N105 form that could be copied.<sup>1</sup>

17. Section 29-10b, G.S., entitled “Fees for record searches and copies,” provides as follows:

The Commissioner of Emergency Services and Public Protection shall charge the following fees for the item or search indicated:

- (1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, sixteen dollars.
- (2) Each copy of an accident or investigative report, sixteen dollars. (Emphasis supplied).

18. In Connecticut Department of Emergency Services v. FOIC, No. CV 11-6012370-3, 2012 WL 3871918, at \*4 (Conn Super. Ct. Aug. 10, 2012), the Court found that “§29-10b plainly and unambiguously provides that the charge for a search is permitted when one requests *a copy* of an accident report.” (Emphasis in original).

19. The respondents contend that the statutory search and copy fee is just as applicable when an individual wants a copy of a portion of an accident or an investigative report as it is when an individual wants a copy of the whole report. The Commission agrees. In the case where an individual requests a copy of a portion of an accident or an investigative report, the respondents’ staff is required to undertake the same activities that they would have to take to search and copy an entire accident or investigative report, which would permit them to charge the statutory fee: they must locate the file, determine if the relevant portion of the accident or investigative report exists and, if it does, review the responsive records for exempt content, and then make the copy or copies. Accordingly, whether the complainant in this case desires a copy of one record within each of Officer LaChance’s accident or investigative reports, or would rather obtain a complete copy of all of Officer LaChance’s reports, the request implicates a search incident to a request for a copy of a record that is part of an accident or an investigative report, and, accordingly, the statutory fee is permissible. Permitting the complainant to avoid the statutory fee pertaining to copies of accident and investigative reports by requesting a select portion of such reports would circumvent the purpose of Conn. Gen. Stat. §29-10b.

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<sup>1</sup> To be clear, the respondents are not contending that the statutory fee of Conn. Gen. Stat. §29-10b would be implicated in those instances where Officer LaChance issued an N105 form in connection with a simple traffic stop because simple traffic stops do not result in the issuance of an accident or an investigatory report.

20. Finally, it is found that, when the respondents determined that the responsive N105 forms were potentially contained within 4,126 reports, they informed the complainant of such fact in writing, afforded him the opportunity to review a list of the relevant reports, reminded him that there would be a \$16.00 fee for each accident or investigative report they searched with the goal of making a copy of the relevant form, and then inquired of the complainant as to how he would like them to proceed. It is found that there is no evidence in the record that the complainant ever responded to the respondents.

21. It is concluded that the statutory fee in §29-10b, G.S., is applicable to the request for copies in this case. It is further concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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.



Valicia Dee Harmon  
Valicia Dee Harmon  
as Hearing Officer