

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Cordaryl Silva,

Complainant

against

Docket #FIC 2017-0688

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

Respondents

September 26, 2018

The above-captioned matter was scheduled to be heard as a contested case on February 5, 2018, at 9:30 a.m., at which time the complainant appeared, however, the respondents did not appear. The hearing was continued based on the representation of counsel for the respondents, via telephone conversation with the clerk of the Commission, that notice of the hearing had not been received by the respondents. It is found that a continued contested case hearing was held on March 16, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts 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.).

During the March 16, 2018 hearing in this matter, the complainant requested a continuance of the hearing, which request was denied by the hearing officer. Thereafter, the complainant stated that, while he would have preferred a continuance in the matter, he wished to withdraw his complaint¹. The Report of Hearing Officer was issued on April 11, 2018.

¹ See 10:05:17 through 10:05:21 a.m. of the recording of the March 8, 2018 hearing in the above-captioned matter when the complainant repeatedly stated "I withdraw."

At the Commission's regular meeting of June 13, 2018, the Commission voted to reopen the matter.

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 October 10, 2017, the complainant made a request to the respondent department for the following:
 - a. All police reports and notes that state police wrote pertaining to his case;
 - b. All crime scene photos of BJ's Café at Anson Street and Lafayette Street;
 - c. All reports from State crime lab specifically ballistics on the two bullets and gun power testing on the victims clothes and any other tests done by the state forensic lab.
3. By letter received and filed on November 13, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information Act ("FOI") by denying his records request. The complainant requested the imposition of a civil penalty.
4. At the hearing in this matter, however, the complainant stated that he was appearing at the hearing only to learn what information the respondents had 'to turn over to him.'²
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:

² See 9:55:17 a.m. of the recording of the March 8, 2018 hearing the above-captioned matter.

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, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. It is found that there is no evidence in the administrative record of when the respondents received the complainant’s October 10, 2017 request.

10. It is found that the complainant sent a follow-up letter to his October 10, 2017 request postmarked January 8, 2018 which the respondents confirmed receiving in a letter to the complainant dated January 11, 2018.

11. It is found that by the same January 11, 2018 letter, the respondents informed the complainant that more information was required to process, and comply with, his request such as his date of birth, any prior names or alternative spellings, case numbers and/or times of incidents.

12. It is found that the complainant provided the information described in paragraph 11, above, but that the respondents then informed him, by letter dated February 16, 2018, that he needed to remit the \$16.00 fee for the search and copying of each investigation report he requested prior to the search beginning. It is found that the respondents informed the complainant that the fee could not be waived.

13. Section 29-10b, G.S., provides:

The Commissioner of Public Safety shall charge the following fees for the item or service 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.

14. It is found that the requested records are “accident or investigative report[s],” within the meaning of §29-10b, G.S.

15. In Edmondo Mendieta v. Dora B. Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection, Docket #FIC 2015-628 (June 9, 2016)³, the Commission concluded that waiver of the statutory fee for indigent individuals, available under §1-212(d)(1), G.S., is not available for the fee for accident or investigative reports, authorized by §29-10b, G.S.

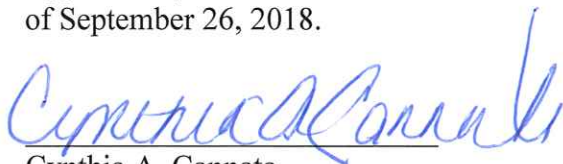
16. At the hearing on this matter, the complainant testified, and it is found, that he remitted the fee for the requested records on March 15, 2018. The respondents, however, testified, and it is found, that the fee had not been received and processed by them.

17. Accordingly, because the respondents did not receive the \$16.00 search and copying fee, it is concluded that the respondents did not violate the FOI Act by failing to provide copies of the requested records to the complainant.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 26, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

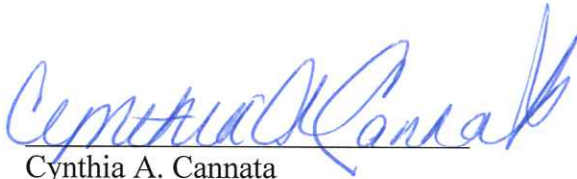
³ The Commission’s decision in Mendieta cited an earlier version of §29-10b, G.S. The statutory fee was increased to \$16.00 by Public Act 09-3 (June Sp. Sess.).

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

CORDARYL SILVA, #332230, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

DORA SCHIRO, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General DeAnn S. Varunes, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission