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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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James Mitchell
Complainant(s)
against

Notice of Meeting

Docket #FIC 2017-0014

Dora B. Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; State of Connecticut, Department of Emergency Services and Public Protection; Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction
Respondent(s)

October 4, 2017


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 **2:00 p.m. on Wednesday, October 25, 2017**. 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 13, 2017**. 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 13, 2017**. **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 October 13, 2017** 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 R.B. Paradis
Acting Clerk of the Commission

Notice to: James Mitchell
Assistant Attorney General Terrence M. O'Neill
Craig Washington

FIC# 2017-0014/ITRA/PSP/VDH/WRBP/2017-10-4

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

James Mitchell,

Complainant

Docket # FIC 2017-0014

against

Dora B. Schiro, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State
of Connecticut, Department of Emergency
Services and Public Protection,

Respondents

September 29, 2017

The above-captioned matter was heard as a contested case on August 31, 2017, at which time the complainant and 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.).

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 or about June 14, 2016, the complainant made a request to the respondents Dora B. Schiro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, and State of Connecticut, Department of Emergency Services and Public Protection (collectively, "DESPP") for copies of toxicology, ballistic and forensic reports concerning a certain criminal matter involving the complainant ("June 14th request").
3. It is found that on or about June 16, 2016, DESPP acknowledged the June 14, 2016 request, described in paragraph 2, above.

4. It is found that on or about June 30, 2016, and July 21, 2016, respectively, Janet Ainsworth, an attorney in DESPP's Legal Affairs Unit, wrote to the complainant seeking additional information regarding the requested forensic records, and providing the complainant with information concerning the release of DNA profile information.

5. It is found that by letter dated November 21, 2016, Attorney Ainsworth provided the complainant with a redacted copy of a report numbered ID-03-002438 ("first report"). In addition, Attorney Ainsworth informed the complainant that a second report numbered ID-03-002311 ("second report") was awaiting review, and would be provided to the complainant once such review was completed.

6. It is found that by letter dated December 22, 2016, the complainant acknowledged that he had received a copy of the first report, which was responsive, in part, to his June 14th request. He also informed DESPP, however, that he had not received a copy of the second report.

7. It is found that by letter dated December 28, 2016, Attorney Ainsworth informed the complainant that Attorney Wade Luckett represented to another attorney employed in DESPP's Legal Affairs Unit, that Attorney Luckett was representing the complainant, and that the second report was being provided to Attorney Luckett in relation to a separate file. Attorney Ainsworth also informed the complainant that "[i]f Attorney Luckett is not representing you or you wish a second copy of [the second report] to go directly to you, there will be a copy charge, unless you seek an indigence waiver." Attorney Ainsworth requested that the complainant "advise whether you wish the second copy."

8. It is found that the complainant did not respond to Attorney Ainsworth's December 28, 2016 letter, described in paragraph 7, above, prior to the filing of the complaint in this matter.

9. By letter of complaint, dated December 30, 2016, and filed on January 6, 2017, the complainant appealed to this Commission, alleging that DESPP denied his records request, described in paragraph 2, above, in violation of the Freedom of Information ("FOI") Act. The complainant also requested the imposition of civil penalties against DESPP. At the hearing, the complainant testified that the first report was not at issue. Accordingly, such report will not be further addressed herein.

10. At the hearing in this matter, the complainant also testified that he had not named the Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction (collectively, "DOC"), as respondents in his complaint; and, it is found that the DOC has played no role relative to this complaint. Therefore, the DOC is hereby removed as a respondent in this matter and the caption of the case above has been accordingly revised.

11. 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.

12. 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.

13. 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.”

14. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a), 1-211(a) and 1-212(a), G.S.

15. It is found that by letter dated February 14, 2017, Attorney Ainsworth followed up on her December 28, 2016 letter, to the complainant, described in paragraph 7, above, regarding whether the complainant wished that DESPP provide him with a copy of the second report, which had previously been provided to Attorney Luckett. In addition, Attorney Ainsworth stated that, in an effort to expedite the matter, she was providing the complainant with DESPP’s indigence packet and requested that he complete the indigence application and return it to the Legal Affairs Unit as soon as possible, so that they could process the complainant’s June 14th request.

16. It is found that on or about August 14, 2017, the DOC hand-delivered a letter, dated August 14, 2017, from DESPP to the complainant and included a copy of the February 14th letter described in paragraph 15, above. Attorney Ainsworth reminded the complainant that DESPP could not release the requested records until payment or an indigence application was received by DESPP from the complainant.

17. At the hearing, the complainant argued that, at no point, did he request or authorize DESPP to provide the second report to Attorney Luckett, who represents the complainant in a habeas matter. In addition, the complainant testified that it was only after the complaint was filed in this matter that DESPP informed the complainant that he needed to file an indigence application.

18. It is found that the complainant was aware, prior to the filing of the complaint in this matter, that there would be a copy charge for a copy of the second report, unless he sought an

indigence waiver. It is found that as of the hearing in this matter, the complainant had neither provided payment nor an indigence application to DESPP.

19. It is found that the respondents did not deny the complainant access to the second report.

20. It is concluded that the respondents did not violate the FOI Act as alleged by 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 hereby dismissed.


Paula S. Pearlman
as Hearing Officer