

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Richard Burgess and Connecticut Carry Inc.,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-251

Reuben Bradford, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; Thomas
Hatfield, Legal Affairs Unit, State of Connecticut,
Department of Emergency Services and Public
Protection; State of Connecticut, Department of
Emergency Services and Public Protection,
Respondent(s)

December 19, 2012

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 23, 2013**. 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 11, 2013**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE January 11, 2013**. **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 11, 2013**, 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: Richard Burgess
Terrence M. O'Neill, AAG

An Affirmative Action/Equal Opportunity Employer

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Richard Burgess and
Connecticut Carry, Inc.,

Complainants

against

Docket #FIC 2012-251

Reuben Bradford, Commissioner,
State of Connecticut, Department of
Emergency Services and Public Protection;
Thomas Hatfield, Legal Affairs Unit,
State of Connecticut, Department of
Emergency Services and Public Protection;
and State of Connecticut, Department of
Emergency Services and Public Protection

Respondents

October 22, 2012

The above-captioned matter was heard as a contested case on October 11, 2012, at which time the complainants and the respondents appeared 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 April 25, 2012, the complainant Burgess called the State Police Bureau of Identification and inquired whether an FBI background check, as part of a pistol permit application, conducted on an individual, whose name the complainant provided, had been returned to the police department and, if so, on what date. It is further found that, on April 25, 2012, the complainant Burgess followed up on his phone conversation with an email to the respondents, in which he complained that he had been denied "prompt access to a document."
3. It is found that, by letter dated April 30, 2012, the respondents acknowledged the "verbal request for records," described in paragraph 2, above, and informed the complainants that "the names and addresses of pistol permit applicants are...confidential...pursuant to Conn Gen. Stat. §29-28(d)." It is found that the respondents further explained that they therefore "cannot confirm whether the individual you are asking about is a pistol permit applicant."

4. It is found that the complainants and the respondents thereafter exchanged additional emails in which they each expressed their opposing positions as to the disclosability of the requested information. It is found that the last email sent by the respondents to the complainants, in which the request was denied, is dated May 4, 2012.

5. By email dated May 7, 2012, and filed May 9, 2012, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with the request for records described in paragraph 2, above.

6. 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.

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. (Emphasis added).

8. 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.”

9. It is found that the records, described in paragraph 2, above, to the extent they exist, are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

10. Section 29-28(d), G.S., provides in relevant part that:

(d) Notwithstanding the provisions of sections 1-210 and 1-211, the name and address of a person issued a permit to sell at retail pistols and revolvers pursuant to subsection (a) of this section or a state or a temporary state permit to carry a pistol or revolver pursuant to subsection (b) of this section, or a local permit to carry

pistols and revolvers issued by local authorities prior to October 1, 2001, shall be confidential and shall not be disclosed

11. At the hearing in this matter, the complainants argued that they are entitled to the requested information because they are not seeking the name or address of a person issued a pistol permit, but rather, merely are requesting information regarding whether a background check on a particular person who had applied for a permit had been sent to the police department. The complainants further noted, in support of their argument that they are not seeking names or addresses, that they had, in fact, supplied the name of the applicant to the respondents.

12. The respondents contended, at the hearing in this matter, that the request, described in paragraph 2, above, was not a request for records, but rather, was a request for the respondents to answer questions, which they are not required to do under the FOI Act.

13. Although the Commission agrees that a public agency has no duty, under the FOI Act, to answer questions, it is found, based upon the April 30 letter and the emails described in paragraphs 3 and 4, above, that the respondents, at the time of the request, described in paragraph 2, above, interpreted and treated it as a request for records. Accordingly, the Commission also finds such request to be a request for records and concludes that jurisdiction is established.

14. In the alternative, the respondents argued that they are constrained by the confidentiality provisions contained in §29-28(d), G.S., from responding to the complainants' request, described in paragraph 2, above.

15. In MariAn Gail Brown and the Connecticut Post v. Chief, Police Department, City of Bridgeport, Docket #FIC 2007-268 (March 26, 2008), the Commission concluded:

Section 29-28(d), G.S., exempts from mandatory disclosure the names and addresses of: persons whose applications are pending; persons whose applications have been approved; persons whose applications were initially denied but later approved on appeal; and persons whose applications were denied but who have pending appeals of such denials.

16. Moreover, it is found that the request in this case is a "targeted request" (i.e. one in which the individual about whom confidential information is sought has been named), and that it therefore would be impossible for the respondents to (1) acknowledge the existence of responsive records without also effectively disclosing the name of such applicant or (2) provide such records with redactions without also effectively disclosing the name of such applicant. See Orlando Rinaldini v. Commissioner, State of Connecticut, Department of Consumer Protection; and State of Connecticut, Department of Consumer Protection, Docket #FIC 2009-701 (June 23, 2010)(appeal of DCP's denial of "targeted request" dismissed by Commission).

17. Based upon the foregoing, it is 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 dismissed.



Kathleen K. Ross
as Hearing Officer

FIC 2012-251/hor/kkr/101222012