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FREEDOM OF INFORMATION



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Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-520

Chief, Police Department, City of New London;
and Police Department, City of New London,
Respondent(s)

March 25, 2013

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, April 24, 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 April 12, 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 April 12, 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 April 12, 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: Robert Cushman
Brian K. Estep, Esq.

2013-03-25/FIC# 2012-520/Trans/wrbp/VDH/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Robert Cushman,

Complainant

against

Docket #FIC 2012-520

Chief, Police Department,
City of New London; and
Police Department, City of
New London,

Respondents

March 25, 2013

The above-captioned matter was heard as a contested case on February 22, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts 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, by letter dated February 22, 2012, the complainant requested that the respondents provide him with a copy of all records and reports, including but not limited to all incident reports, A-44 report and any attachments, and chemical alcohol tests results, pertaining to a May 21, 2004 arrest involving a particular individual.
3. By letter dated September 20, 2012 and filed September 24, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for records described in paragraph 2, above.
4. 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.

5. 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. (Emphasis supplied).

6. 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.”

7. It is found that, to the extent that the respondents maintain the records described in paragraph 2, above, the records are “public records” and must be disclosed in accordance with §§1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

8. At the hearing on this matter, the respondents contended that, after searching their records for responsive documents, they determined that the records they have withheld are permissibly exempt from disclosure based on the provisions of the State’s erasure statutes.

9. The complainant contended that his request for records was not acknowledged by the respondents, even though he sent his request by certified mail. He further contended that, because there are records pertaining to the underlying arrest of the particular person in the possession of the Department of Motor Vehicles (“DMV”), the respondent police department must have sent those records to the DMV. The complainant believes that the respondents should be required to produce copies of any records forwarded to the DMV, as well as any records in their possession that have not been actually destroyed.

10. Section 54-142a, G.S., provides in relevant part that:

(c)(1) [w]hensoever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state’s or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased. . . .

11. Section 54-142c, G.S., provides in relevant part that:

(a) [t]he clerk of court or any person charged with retention and control of erased records . . . or any criminal justice agency having information contained in such erased records shall not disclose to anyone the existence of such erased records or

information pertaining to any charge erased under any provision of this part, except as otherwise provided in this chapter.
(Emphasis supplied).

12. Pursuant to §54-142g (b), G.S., a “criminal justice agency” is defined as including “any. . . governmental agency created by statute which is authorized by law and engages, in fact, as its principal function in activities constituting the administration of criminal justice, including, but not limited to, organized municipal police departments. . . .”

13. It is concluded that the respondent police department is a criminal justice agency for purposes of the erasure provisions of §54-142c, G.S.

14. It is further concluded that the erasure provisions of §§54-142a and 54-142c, G.S., supersede the disclosure requirements of the FOI Act and that any of the requested records subject to the erasure statutes are not required to be disclosed.

15. It is found that the records in the respondents’ possession are exempt from disclosure pursuant to the State’s erasure statute because the underlying charges have been nolleed by a superior court and thirteen months have elapsed since the entry of the nolle.


16. It is therefore concluded that the respondents did not violate the disclosure provision of the FOI Act by denying the complainant’s request for records.

17. With regard to the respondents’ failure to acknowledge the complainant’s request, the respondents readily admitted that there was a clerical error in the handling of the request when it was received by the police department. The respondents conceded that this should not have happened and that they were in the process of inquiring with the individual who signed for the request to ensure that future FOI requests are properly acknowledged.

18. Finally, it was the respondents’ unequivocal testimony that all records in their possession have been erased pursuant to statute, and that therefore such records cannot be disclosed. Pursuant to the provisions of §54-142c, G.S., the fact that such records have not been physically destroyed is irrelevant to the question of whether the records are exempt from public disclosure. The determination in this case does not change because another agency, such as the DMV, may have records in its possession related to the underlying nolleed charge.

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
as Hearing Officer