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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 Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-348

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

Respondent(s)

May 14, 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, June 12, 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 May 31, 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 May 31, 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 May 31, 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: James Torlai
Terrence M. O'Neill, AAG

5/14/13/FIC# 2012-348/Trans/wrbp/TCB//CAL

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

James Torlai,

Complainant

against

Docket #FIC 2012-348

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

Respondents

May 10, 2013

The above-captioned matter was heard as a contested case on November 5, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Due to technical problems with the Commission's recording software, no audio recording was made of the November 5th hearing, and the hearing was re-held on February 4, 2013, at the request of the complainant, in order to create a record of the proceedings.

At the request of the respondents, this Commission takes administrative notice of the record and final decision in Docket #FIC 2012-205, James Torlai v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police; and State of Connecticut, Department of Emergency Services and Public Protection, Division of State Police.

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 of complaint dated June 25, 2012 and filed on June 28, 2012, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request for public records.
3. 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.

4. Sections 1-210(a) and 1-212(a), G.S., state, respectively, in relevant parts:

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.

...

Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.

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

6. It is found that, by letter dated May 3, 2012, the complainant made a request to the respondents for a copy of all recordings made by equipment in the police car driven by the arresting officer in case #1100332907. The complainant clarified in that letter that he was requesting not only video recordings but also audio, video, data or other recordings and any combination of audio, video, data or other recordings made on June 16, 2011 that are related to case #1100332907.

7. It is found that case #1100332907 pertains to the arrest of the complainant.

8. It is found that the respondents acknowledged the complainant's May 3, 2012 request by letter dated May 9, 2012. It is further found that the complainant again contacted the respondents by letter dated June 13, 2012, and inquired about progress on his request.

9. It is found that the respondents provided the complainant with a copy of an audio recording on August 17, 2012. It is also found, however, that the complainant believed that other recordings exist but were not provided to him.

10. The testimony at the November 5, 2012 hearing principally concerned the existence of a video recording of the traffic stop of the complainant. It is found that no recording of that stop exists, due to a malfunction of the equipment at the time of the stop.

11. At the re-held hearing of February 4, 2013, the complainant claimed that records responsive to his requested exist on the respondents' CAD system that have not been provided to him.

12. It is found that the CAD system can loosely be described as a computer system used in state police cars and that it records when an officer runs a marker plate, and searches for driver's license information, arrest warrants, previous arrests or infractions.

13. It is found that the CAD system was used in case #1100332907 and that the complainant was not provided with any copies of those records.

14. At the hearing on this matter, the respondents stated that they would provide the complainant with a copy of the records from the CAD system for case #1100332907.

15. The complainant also claimed that the respondents' compliance was not prompt.

16. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

17. The Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request.

18. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

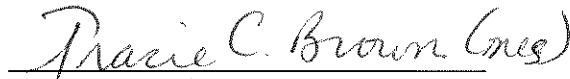
19. It is found that the employee that was responsible for responding to the complainant's request left the employ of the respondents before providing the complainant with any record responsive to the request. It is found that it was not until after the respondents received notice of the complaint in this matter that they became aware that the complainant had an outstanding records request. It is found that the respondents failed to timely confirm that the employee had complied with the request or, in the alternative, transfer the complainant's request to another employee for compliance.

20. It is found that, under the facts and circumstances of this case, the respondent's provision of the requested records above, was not prompt within the meaning of §§1-210(a), and 1-212(a), G.S.

21. It is therefore concluded that the respondents violated §§1-210(a), and 1-212(a), G.S., by failing to promptly comply with the complainant's request.

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

1. Henceforth, the respondents shall strictly comply with the promptness provisions of §§1-210(a), and 1-212(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer