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FREEDOM OF INFORMATION



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James Torlai,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2013-226

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

Respondent(s)

January 15, 2014

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, February 26, 2014**. 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 February 11, 2014**. 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 February 11, 2014**. **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 February 11, 2014**, 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

1/15/14/FIC# 2013-226/Trans/wrbp/PSP//CAL

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FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

James Torlai,

Complainant

Docket # FIC 2013-226

against

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

Respondents

January 15, 2014

The above-captioned matter was heard as a contested case on November 22, 2013 at which time the complainant and 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 December 8, 2012, the complainant made a written request to the respondents for copies of:
 - [a] Any records such as assignment sheets or activity reports that would show the activities of [Trooper] Giancarlo Ardolino on May 8, 2011;
 - [b] Any records related to license plates searches or inquiries made by Giancarlo Ardolino from April 1, 2011 through to and including June 12, 2011. A list of all license plate numbers Giancarlo Ardolino searched on or made inquiries about during this time period would satisfy this portion of my request.
3. It is found that, by a response form dated December 12, 2012, the legal affairs staff in

the respondents' Legal Affairs Unit acknowledged the complainant's December 8th request and informed him that he would be notified as soon as possible of the results of their review for records and any fees that may be due. It is further found that on December 13, 2013, the respondents' legal affairs staff forwarded the complainant's request to Connecticut State Police Troop L to conduct a search for records responsive to the complainant's request.

4. It is found that, by letter dated March 2, 2013 to the respondents, the complainant inquired as to the status of his December 8th request and when he might expect to receive the records requested. It is also found that on March 2nd the respondents followed-up with Troop L regarding the complainant's request.

5. It is found that on March 4, 2013, approximately three months after the receipt of the records request, Troop L informed the respondents' Legal Affairs Unit that Trooper Ardolino was with Troop A. The request was then forwarded to Troop A to conduct a records search. Subsequently, Troop A provided the Legal Affairs Unit with a copy of a day sheet and advised legal staff that due to technical difficulties they were unable to retrieve records relating to license plate searches and inquiries made by Trooper Ardolino within the specified time frame described in paragraphs 2[b] and 6, above.

6. It is found that, by letter dated April 1, 2013, the complainant renewed his request for the records described in paragraph 2, above.

7. By letter dated April 11, 2013, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with all records responsive to his records request.

8. 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.

9. 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.

10. Section 1-212(a), G.S., provides in relevant part that "any person applying in writing

shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

11. It is found that the records requested by the complainant, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

12. It is found that, by email dated June 25, 2013, the respondents informed the complainant that his records request was reassigned to a different attorney in the respondents' Legal Affairs Unit. In addition, it is found that the respondents provided the complainant with an unredacted activity summary form and a partially redacted day sheet in response to his request described in paragraphs 2[a] and 6, above. The respondents claimed that the redactions on the day sheet were of employee numbers and payroll codes exempt from disclosure pursuant to §1-210(b)(2), G.S. The respondents also informed the complainant that they were unable to retrieve records pertaining to license plate searches and inquiries made by Trooper Ardolino, and were attempting to determine whether there is another way to retrieve such information.

13. It is found that in October 2013, the Legal Affairs Unit requested that the respondents' Crime Analysis Unit conduct a new search for records and generate an independent statistical report in response to the complainant's records request. It is found that the Crime Analysis Unit generated an independent statistical report which the Legal Affairs Unit then utilized to create CAD notes (through the respondents' CAD computer system)¹ to supplement the records provided to the complainant on June 25th. Subsequently, by email dated November 6, 2013, the respondents provided the complainant with redacted and unredacted copies of CAD notes and a redacted copy of a printout containing license plate searches and inquiries made by Trooper Ardolino during the specified time period. The respondents claimed that the following information was redacted pursuant to Conn. Gen. Stat. §14-10: operators' names, numbers and dates of birth, and certain information on CAD notes. The respondents also redacted COLLECT query codes pursuant to §1-210(b)(19) of the FOI Act.

14. It is found that after providing the complainant with the records described in paragraph 13, above, the respondents' legal staff noticed that there was a problem with some of the data collected in such records; specifically, the issue was with the time that the license plate searches were run. Subsequently, the legal staff requested that the vendor who handles computer aided dispatch and records management services for the respondents to run a second search for responsive records. By email dated November 18, 2013, the respondents provided the complainant with a reformatted report that included the times, dates and all the license plates that were searched during the requested time period.

15. Subsequent to the hearing in this matter, by letter dated December 3, 2013, the

¹ The Commission takes administrative notice of its decision in Docket #FIC 2012-348; 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 in which the Commission 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.

complainant informed the Commission that he was withdrawing the portions of his complaint relating to employee numbers, query codes and information redacted from CAD printouts. Accordingly, such information will not be addressed further herein.

16. The complainant claims that the respondents have failed to provide him with all license plate numbers responsive to his records request; that the respondents' response to his request was not prompt; and that payroll codes (that may indicate that a person used sick or personal time) are not exempt from disclosure pursuant to §1-210(b)(2), G.S.

17. With respect to the payroll code redactions described in paragraphs 12 and 16, above, the respondents testified and the complainant agreed that the payroll codes do not relate to the activities of Trooper Ardolino during the specified time period. It is therefore found that such information is not responsive to the complainant's request and shall not be further addressed herein.

18. With respect to the license plate numbers, it is found that the second report provided to the complainant on November 18th, described in paragraph 14, above, is a complete report of all the license plate numbers responsive to the complainant's records request described in paragraphs 2[b] and 6, above.

19. With respect to whether the respondents' response to the complainant's request was prompt, 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.

20. 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.

21. It is found that the respondents' Legal Affairs Unit handles over 1000 records requests per year, including approximately 10 requests from the complainant since mid-summer 2013. In addition, it is found that the staff attorney who was originally assigned to handle the complainant's request was later assigned as the lead attorney responsible for handling all requests pertaining to the Newtown tragedy in December 2012 and was involved in legislative proposals and presentations to legislators relating to gun licensing and firearms during the 2013 legislative session. It is further found that since June 2013 the attorney reassigned to handle the complainant's request has, as acknowledged by the complainant at the hearing, increased efforts to respond to his requests. It is also found, however, that no action was taken on the complainant's request for approximately three months while the request was with Troop L. In


addition, it is found that it was not until the end of June 2013, approximately three months after the complainant renewed his December 8th request, that the respondents provided any responsive records to the complainant.

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

23. 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.


Paula Sobral Pearlman
as Hearing Officer