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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 2013-713

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)

July 17, 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, August 13, 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 August 1, 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 August 1, 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 August 1, 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

Wendy Paradis
Acting Clerk of the Commission

Notice to: James Torlai
Stephen Sarnoski, Esq.

FIC# 2013-713/Trans/wrbp/VRP//CAL/2014-07-17

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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(s)

against

Docket #FIC 2013-713

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)

July 17, 2014

The above-captioned matter was heard as a contested case on June 16, 2014, 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. By letter of complaint filed November 18, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his October 25, 2013 request for records related to an arrest of an individual on January 8th, 2012.
3. It is found that the complainant made a July 3, 2013 request for a copy of all breath test results related to the arrest of Richard Angelillo on or about January 8, 2012.
4. It is found that the respondents acknowledged the request on July 9, 2013.
5. It is found that the complainant repeated his July 3, 2013 request on October 25, 2013.
6. It is found that the respondents replied on November 4, 2013 by saying that no records responsive to the request had been located. At the time of this response, the

respondents believed that any responsive records had been erased because Angelillo had not been convicted of the charge for which he was originally arrested.

7. It is found that subsequently, in preparation for the hearing in this matter, the respondents were advised by counsel that because Angelillo had been convicted of a lesser charge, his records had not been erased.

8. It is found that the respondents then provided the requested records on or about May 15, 2014.

9. 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.

10. Section 1-210(a), G.S., provides in relevant part:

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.

11. 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.”

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

13. It is found that the respondents' failure to provide the requested records earlier was based on a mistaken reading of erasure law, a mistake which the respondents acknowledged and corrected when the matter was brought to the attention of counsel.

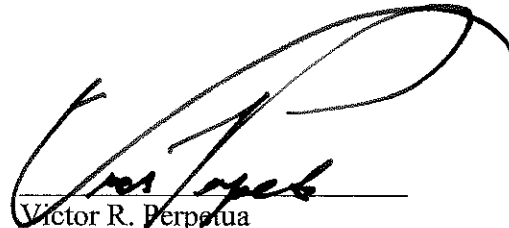
14. It is concluded that, although the respondents' legal mistake was not intentional and was not designed to mislead the complainant or delay his access to the

records, the mistake occurred in an area of law in which the respondents are expected to be accurate, and therefore does not excuse the respondents' failure to provide the records promptly.

15. It is therefore concluded that the respondents unintentionally violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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.



Victor R. Perpetua
As Hearing Officer