



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
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William Gemmell,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2014-845

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

July 30, 2015

## 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 26, 2015**. 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 14, 2015**. 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 14, 2015**. **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 **fifteen (15) copies** be filed **ON OR BEFORE August 14, 2015**, 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: William Gemmell  
M. Jeffrey Spahr, Esq.  
cc: Craig Washington

2015-07-30/FIC# 2014-845/Trans/wrbp/VRP//VDH

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

William Gemmell,

Complainant

against

Docket #FIC 2014-845

Chief, Police Department,  
City of Norwalk; Police  
Department, City of Norwalk;  
and City of Norwalk,

Respondents

July 20, 2015

The above-captioned matter was heard as a contested case on July 17, 2015, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 the complainant initially made a request to the respondents by letter dated September 30, 2014, in which he requested records pertaining to his criminal case.
3. It is found that the complainant did not file a letter of complaint to the Commission alleging that he had been denied access to the public records he requested on September 30, 2014. Instead, he made a second request to the respondents on October 15, 2014, asking them to reconsider their response to his September 30, 2014 request, and indicating his intent to file an FOI complaint with the Commission if his second request was not complied with.
4. However, the complainant conceded at the hearing that he did not follow up by filing a complaint concerning his October 15, 2014 request. Instead, the complainant simply provided a copy of his October 15, 2014 request to the Commission.
5. It is also found that the Commission by letter dated January 2, 2015, informed the complainant that his October 15, 2014 submission to the Commission would not be scheduled for a hearing because he had not filed a complaint within thirty days after an alleged violation, referring him to §1-206, G.S., and asking him to submit a new request for the records he sought.

The complainant was advised that if he received a denial of his new request, or had waited four business days without a response from the agency, he might then file a new complaint with the Commission within thirty days after the alleged violation.

6. It is found that, instead of making a new request and filing a complaint after a denial of that request, the complainant responded by letter dated February 25, 2015 requesting a hearing on the papers he had submitted.

7. Section 1-200(5), G.S., defines “public records” as follows:

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, ... whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

8. 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 ... receive a copy of such records in accordance with the provisions of section 1-212.

9. Section 1-212(a), G.S., provides in relevant part: “Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

11. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 or wrongfully denied the right to attend any meeting of a public agency or denied any other right conferred by the Freedom of Information Act may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission.

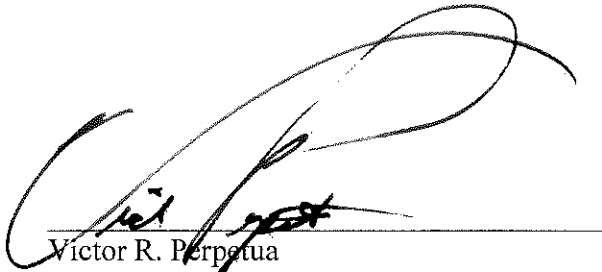
12. It is found that the complainant apparently misunderstood the requirements of §1-206(b)(1), G.S., requiring the filing of a notice of appeal, and the import of the Commission’s January 2, 2015 letter.

13. It is concluded that, in the absence of a complaint to the Commission filed after an alleged denial of public records, the Commission is without jurisdiction to adjudicate any response to the complainant's October 15, 2014 request.

14. Nonetheless, as a gesture of good faith, and in an effort to obviate the need for the complainant to make a new request and file an appeal, the respondents at the hearing agreed to provide certain records to the complainant in satisfaction of his requests. The complainant acknowledged that such records from the respondents were satisfactory to him, and that if those records, after delivery to his correctional institution, were withheld from him, he would pursue his rights under the FOI Act by filing a complaint naming the Department of Correction as a respondent.

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

1. The parties are commended for using their hearing as an opportunity to reach a resolution of their dispute.
2. The complaint is dismissed.



Victor R. Perpetua  
as Hearing Officer