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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 2015-445

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

Respondent(s)

February 22, 2016

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, March 23, 2016**. 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 March 11, 2016**. 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 March 11, 2016**. **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 March 11, 2016**, 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
Assistant Attorney General James Caley
2016-02-22/FIC# 2015-445/Trans/wrbp/VDH/CAL

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 2015-445

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

Respondents

February 18, 2016

The above-captioned matter was heard as a contested case on December 2, 2015, 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 dated July 8, 2015 and filed July 9, 2015, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with an in camera order that issued in connection with a previous complaint, which this complainant had filed against these respondents.
3. The Commission takes administrative notice of the final decision in Docket #FIC 2013-167, 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 (Jan. 8, 2014) (referred to hereinafter as "Torlai I").
4. In the instant matter, the complainant contends that, in context of Torlai I, the hearing officer issued an in camera order, requiring the respondents to submit the records at issue to the Commission for an in camera inspection. (See Torlai I, In Camera Order, Oct. 8, 2013). It is found that the respondents did submit the records at issue to the Commission for an in camera inspection. The complainant contends, however, that the respondents failed to

submit all of the responsive records in their possession to the Commission for an in camera inspection and therefore failed to comply with the in camera order of the hearing officer in Torlai I. Specifically, the complainant deems the instant appeal a “non-compliance” appeal because he now “believe[s] that the State Police withheld records from the hearing officer.”

5. In the final decision in Torlai I, the Commission ordered the respondents, in relevant part, to provide to the complainant with a copy of those portions of the in camera records determined not to be exempt from disclosure. Based on the testimony in the instant matter, it is found that the respondents complied with the final decision in Torlai I.

6. Accordingly, it is concluded that there is no non-compliance with a final Commission decision to adjudicate in the instant case.

7. In addition, there is no basis upon which to construe the instant appeal as one concerning a request for and a denial of public records.

8. The evidence produced at the contested case hearing in the instant matter reveals that, in June 2014, the complainant began to question the respondents about the thoroughness of their compliance with the hearing officer’s October 8, 2013 in camera order in Torlai I. The complainant contended that his concern began when he discovered two records that he believed should have been, but were not, submitted to the Commission in connection with the hearing officer’s in camera order in Torlai I. In other words, it is found that the complainant waited one hundred and forty-nine days after the issuance of the final decision in Torlai I, to contact the respondents about their compliance with the in camera order in that matter.

9. It is further found that the complainant’s last correspondence with the respondents concerning their alleged non-compliance with the in camera order in Torlai I occurred on June 9, 2014 and the appeal in the instant matter was filed on July 9, 2015. Accordingly, it is found that the complainant allowed three hundred and ninety-six days to elapse between his last written communication with the respondents and the filing of the appeal in the instant matter.

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

Any person denied the right to inspect or copy records under section 1-210. . . 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. A notice of appeal shall be filed not later than thirty days after such denial. . . .

11. It is concluded that the respondents’ compliance with an in camera order issued by a hearing officer is not a right conferred upon the complainant by the FOI Act, within the meaning of §1-206(b)(1), G.S. It is further concluded that the Commission does not have subject matter jurisdiction over the complaint herein.

12. Finally, for the sake of clarity, the Commission notes that no evidence was elicited during the contested case hearing in the instant matter that in any way establishes or gives rise to an inference that the respondents failed to comply with the in camera order that issued in Torlai I.

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