

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Tajah McClain,

Complainant

against

Docket #FIC 2017-0526

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

Respondents

May 9, 2018

The above-captioned matter was heard as a contested case on November 14, 2017, at which time the complainant and the respondents appeared, stipulated to certain facts 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.).

The hearing officer granted the respondent Department of Correction's motion to dismiss because the Department has not received and so does not maintain any records related to the complainant's request. The caption has been amended accordingly.

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)(A), G.S.
2. It is found that on August 9, 2017, the complainant requested copies of records pertaining to a criminal case from 2010.
3. By letter filed September 7, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with the requested records.
4. 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.

5. 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, ... or (3) receive a copy of such records in accordance with section 1-212.

6. 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.”

7. 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.

8. It is found that on October 3, 2017, the respondents informed the complainant that they maintained records responsive to his request, and that they would provide a copy of such records upon the payment of the requested fee.

9. Section 1-212(a)(1), G.S., provides in relevant part:

...The fee for any copy provided in accordance with the Freedom of Information Act:

By an executive, administrative or legislative office of the state, a state agency or a department, institution, bureau, board, commission, authority or official of the state, including a committee of, or created by, such an office, agency, department, institution, bureau, board, commission, authority or official, and also including any judicial office, official or body or committee thereof but only in respect to its or their administrative functions, shall not exceed twenty-five cents per page

10. Section 1-212(d)(1), G.S., requires a public agency to waive the fee for copies of records when “[t]he person requesting the records is an indigent individual.”

11. The complainant contended that he was indigent at the time of his request, and therefore was entitled to a fee waiver.

12. The term “indigent individual” is not defined in the FOI Act. However, the Commission has previously reviewed the issue of indigence in the context of §1-212(d)(1), G.S.,

and made clear that: “the standard for establishing one's eligibility for a waiver or reduction of the fees charged for copies of public records, is wholly within the discretion of the custodial public agency, as long as the standard is objective, fair and reasonable, and applied in a nondiscriminatory manner.” Kulick v. West Hartford, contested case docket #FIC 1991-356 (October 14, 1992).

13. It is found that the Bridgeport respondents apply the same standard of indigence as that employed by the Department of Correction (“DOC”).

14. It is found that DOC’s Administrative Directive 3.10 (Fees, Reimbursements and Donations), provides, in relevant part:

An inmate shall be charged twenty-five cents for each page copied. The fee shall be waived if an inmate is indigent. For copies of records pursuant to the [FOI] Act, an inmate shall be considered indigent if the monetary balance in his or her inmate trust account, or any other known account, has not equaled or exceeded five dollars (\$5.00) at any time (1) during the ninety (90) days preceding the receipt by the Department of the request for records and (2) during the days preceding the date on which the request for records is fulfilled (up to a maximum of ninety (90) days after the date of the request).

15. The Commission has approved DOC’s standard of indigence insofar as set forth in Administrative Directive 3.10. See Bryant Rollins v. Freedom of Information Officer, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction; Docket #FIC 2010-030 (September 22, 2010).

16. It is found that the complainant was not indigent, within the meaning of §1-212(d)(1), G.S., at the time of his request or at any time while his request has been outstanding.

17. It is found that the Bridgeport respondents did not violate §1-212(d)(1), G.S., by refusing to waive the fee for copies of records, and by refusing to provide such records unless the complainant paid the fee.


18. It is concluded that the respondents did not violate the FOI Act, as alleged.

19. At the hearing in this matter, the complainant said that he was particularly interested in a certain video or audio recording. The respondents’ attorney agreed to ask the Assistant State’s Attorney who prosecuted the complainant’s criminal trial whether he maintained such recording, and if so, to endeavor to make it available to the complainant. The Commission appreciates the respondents’ continued efforts in this regard.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 9, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

TAJAH MCCLAIN, #232694, Cheshire Correctional Institution, 900 Highland Avenue, Cheshire, CT 06410

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT, c/o Attorney Tamara J. Titre, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604; **COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF CORRECTION**, c/o FOI Administrator, 24 Wolcott Hill Road, Wethersfield, CT 06109



Cynthia A. Cannata
Acting Clerk of the Commission