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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 2013-390

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)

April 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, May 14, 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 May 2, 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 May 2, 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 May 2, 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

4/15/14/FIC# 2013-390/Trans/wrbp/VRP/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(s)

against

Docket #FIC 2013-390

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)

April 10, 2014

The above-captioned matter was heard as a contested case on March 31, 2014, at which time the complainant appeared and presented testimony, exhibits and argument on the complaint. The respondent did not appear.

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 July 1, 2013, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with the Commission's final decision in Docket #FIC 2012-205, James Torlai v. Division of State Police et al. ("Torlai I").
3. The Commission takes administrative notice of its records and files in Torlai I.
4. In Torlai I, the Commission concluded that the respondents violated the FOI Act by first failing to provide records pertaining to pending charges while the charges were still pending, including but not limited to the "record of the arrest," and then withholding the same records from the complainant, the subject of the records, on the grounds that the records had been erased in the time period that elapsed between his original January 2, 2012 request and the respondents' eventual March 27, 2012 response.

5. In Torlai I the Commission issued the following order to the respondents:

1. The respondents shall forthwith provide copies of any responsive erased records to the complainant, upon his submitting to the respondents satisfactory proof of his identity, pursuant to §54-142a(e)(1), G.S. Specifically, the respondents shall provide copies of the records described in paragraphs 3.a, 3.d, 3.e, 3.g and 3.k

2. The respondents shall preserve any requested erased records during the pendency of any appeal from this decision.

6. The following records pertaining to a traffic stop of the complainant on June 16, 2011 for allegedly erratic driving were ordered disclosed in Torlai I:

- 3.a. All reports, written statements, arrest cards, notes, drafts and other such documents;
- 3.d. Any records related to property taken from my vehicle when it was searched;
- 3.e. Any records related to property taken from my wallet when it was searched;
- 3.g. Any signed reports or summaries of my arrest which were made available to the public; and
- 3.k. Results of any searches or inquiries made by any employee of the State Police including private contractors or other agents of the State Police over the last 40 years based on my fingerprints.

7. The final decision in Torlai I was issued on April 12, 2013.

8. It is found that the complainant sent proof of his identification to the respondents on April 26, 2013, pursuant to paragraph 1 of the order in Torlai I.

9. It is found that the complainant further contacted the respondents on May 10, 2013, asking if they were intending to appeal Torlai I, to which he received no reply; and on May 31, 2013, again sending proof of his identification. Further email correspondence ensued on June 3 and June 26, at which time the complainant had received none of the records described in paragraph 6, above.

10. The complainant acknowledges that he has received records after he filed his complaint with the Commission, but it is found that such records, none of which were provided within ten weeks of the issuance of the decision in Torlai I, were not provided "forthwith," as ordered.

11. It is therefore concluded that the respondents failed to comply with the order of the Commission in Torlai I.

12. In addition, it is found that the respondents never provided copies of the following records, which the complainant has reason to believe exist:

- a. A version of the incident report referenced in form M-105, which form was sent to the Department of Motor Vehicles;
- b. A supplementary incident report that may have been created on June 17, 2011;
- c. Any records responsive to paragraph 6.3.k, above, regarding the results of any searches done based on the complainant's fingerprints.

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 orders of the Commission.
2. The respondents shall forthwith search for the records described in paragraph 12 of the findings, above, and provide them to the complainant if such records exist. If the records do not exist, the respondents shall forthwith provide to the complainant an affidavit attesting to the search that was conducted for the records, together with an explanation why such records do not exist.



Victor R. Perpetua
As Hearing Officer