

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT  
18-20 Trinity Street Hartford, CT 06106  
Telephone: (860) 566-5682  
Toll-free (CT only): (866) 374-3617  
Fax: (860) 566-6474

Peter Kuck,

Complainant(s)

Notice of Meeting

against

Docket #FIC 2007-403

Albert J. Masek, Jr., Commanding Officer, State of Connecticut, Department of Public Safety, Special Investigations and Support; Attorney Jennifer Janeiro, State of Connecticut, Department of Public Safety, Legal Affairs Unit; and State of Connecticut, Department of Public Safety,

April 30, 2008

Respondent(s)

Transmittal of Proposed Final Decision

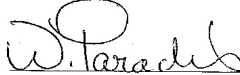
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, 2008**. 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 6, 2008*. 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, the Commission requests that an **original and ten (10) copies** be filed *on or before May 6, 2008*. **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 **eleven (11) copies** be filed *on or before May 6, 2008*, 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:

Rachel M. Baird, Esq., Peter Kuck,  
Henri Alexandre, Esq., Jennifer Janeiro, Esq.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Peter Kuck,

Complainant

against

Docket #FIC 2007-403

Albert J. Masek, Jr., Commanding  
Officer, State of Connecticut,  
Department of Public Safety,  
Special Investigations and Support;  
Attorney Jennifer Janeiro, State of  
Connecticut, Department of Public  
Safety, Legal Affairs Unit;  
and State of Connecticut,  
Department of Public Safety,

Respondents

April 30, 2008

The above-captioned matter was heard as a contested case on April 1, 2008, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The case caption has been amended to reflect the addition of a named respondent.

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 June 29, 2007, the complainant made a request for copies of "public records or files, as defined in Connecticut General Statutes ("General Statutes"), §1-220(a)(5), related to, regarding, and/or concerning the DPS requirement that individuals submit a birth certificate, United States passport or voter registration card when applying to the state of Connecticut for pistol permit renewal."
3. It is found that, by letter dated July 5, 2007, the respondents acknowledged the complainant's request for records, and informed him that that his request would be processed in accordance with the Freedom of Information Act ("FOI Act").

4. By letter dated July 17, 2007 and filed July 20, 2007, the complainant appealed to the Commission, alleging that the respondents' failure to produce the requested records violated the FOI Act.

5. By letter dated July 18, 2007, the respondents advised the complainant that they had completed their search for records in connection with his request, and provided the complainant with two responsive records.

6. By letter dated February 4, 2008 and filed February 7, 2008, the complainant amended his appeal by requesting the imposition of civil penalties against Attorney Jennifer Janeiro and Commanding Officer Albert Masek, Jr.

7. 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 1-218, 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 that:

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

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

10. It is found that, to the extent that they exist, the requested records are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

11. It is found that prior to the hearing in this matter, the respondents provided the complainant with two additional records, both of which predated, and were responsive to, the complainant’s request.

12. It is further found that on the day of the hearing in this matter, the respondents provided the complainant with five additional records, all of which predated, and were responsive to, the complainant’s request.

13. It is concluded that the records provided to the complainant on the day of the hearing, referred to in paragraph 12, above, constitute public records within the meaning of §1-210(a), G.S., and further that such records, provided approximately nine months after the request, were not provided "promptly" within the meaning of §1-210(a), G.S.

14. Consequently, it is concluded that the respondents violated the promptness requirement of the FOI Act.

15. It is found that in connection with their first search for records responsive to the complainant's request, the respondents construed the request too narrowly, searching only for records that addressed the respondents' "implementation" of the policy to require proof of legal status in connection with a pistol permit application. It is found that the respondents' construction of the request was based on previous correspondence between the parties.

16. It found that on the morning of the hearing in this matter, the respondents conducted another search for records responsive to the complainant's request. In addition, at the hearing, the respondents requested that the Commission permit them the opportunity to conduct another search for records that more adequately addressed the scope of the complainant's request, described in paragraph 2, above.

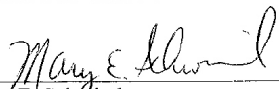
17. While it is found that the respondents failed to make a thorough search for all existing records that are responsive to the complainant's request, it is concluded such failure was based on a genuine misunderstanding of the request. The Commission, therefore, declines to impose a civil penalty in this matter.

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 requirements of the FOI Act.

2. The respondents shall forthwith make a thorough search for the requested records described in paragraph 2 of the findings, above. In the event the respondents locate additional records responsive to the complainant's request, they shall forthwith provide the complainant with copies of such records, at no cost.

3. In the event the respondents do not locate additional records, they shall forthwith provide the complainant with an affidavit attesting that, upon a complete and thorough search of their records, no additional records responsive to his request were located.

  
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Mary E. Schwind  
as Hearing Officer