FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by FINAL DECISION

Kacey Lewis,

Complainant

against Docket #FIC 2017-0180

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

Respondents February 14, 2018

The above-captioned matter was heard as a contested case on December 20, 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, 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, by letter dated February 23, 2017, the complainant requested several categories of records from the respondents, including:

> # 4. Production of documents compiled in connection with the Internal Affairs investigation related to the police brutality complaint filed by Kacey Lewis August 2009 against members of the Waterbury Police Dep't, including findings and/or conclusions of the Internal Affairs investigation.

3. It is found that, by letter dated March 2, 2017, the respondents acknowledged the request described in paragraph 2, above.

4. It is found that, after receiving the request described in paragraph 2, above, the respondents searched for all requested records, and included a search of the records of the Internal Affairs Division. It is further found that, at such time, the respondents did not locate any records responsive to the complainant's request #4, specifically set forth in paragraph 2, above.

5. It is found that, by letter dated March 15, 2017, the respondents informed the complainant that they had located records responsive to certain portions of the complainant's request, but that they had not located any records responsive to the complainant's request #4, specifically set forth in paragraph 2, above.

6. By letter of complaint dated March 21, 2017, and filed March 27, 2017, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act. The complainant wrote:

> ...The basis of this complaint is that I know and believe the Waterbury Police Department acted in bad faith in responding to my FOIA request. Specifically, the information in paragraph #4 of my request, seeking production of documents compiled in connection with the internal affairs investigation related to the police brutality complaint I filed in August 2009 against members of the Waterbury Police Dep't. As a paper trail of the complaint still exists, it is believed that the agency's March 15, 2017 to my FOIA request constitutes a failure to disclose, in violation of the Act...

7. At the hearing in this matter, the complainant reiterated that his allegation in this matter is that the respondents acted in bad faith in responding to his request #4, as described in paragraph 2, above ("the requested records"). The complainant further testified that none of the other requests set forth in his request letter of February 23, 2017, are at issue in this matter.

8. 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 section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

9. 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 (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

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

11. The Commission notes that "bad faith" is neither an element nor a standard set forth in the FOI Act. Accordingly, the complainant's allegation in that regard will not be further addressed herein.

12. With respect to the requested records, the respondents contended that they do not maintain such records; the complainant contended that the respondents must maintain such records.

13. It is found that, after the complainant received the respondents' March 15, 2017, letter, described in paragraph 5, above, he wrote to the respondents on April 15, 2017, and informed them that he had filed a police brutality complaint in August 2009 against the Department. It is also found that the complainant included with his April 15, 2017, letter a copy of an August 20, 2009, letter from the Waterbury Police Department, acknowledging receipt of the complainant's police brutality complaint, and informing the complainant that such complaint had been assigned to the respondents' Internal Affairs Division.

14. It is found that, after the respondents received the letters described in paragraph 13, above, they again searched their records, including the records of the Internal Affairs Division, and again did not find any requested records.

15. During the hearing, the complainant:

: refused to follow the directions of the Hearing Officer;
: having taken the oath, contended that his statements were not testimony;
: refused to answer questions under cross-examination;
: informed the Hearing Officer that he would not proceed with the hearing after the Hearing Officer sustained an objection of the respondents; and
: contended that the hearing was a "sham."

16. The complainant's conduct and refusal to proceed resulted in the premature close of the hearing in this matter.

17. The respondents' August 20, 2009, acknowledgement letter, described in paragraph 13, above, is evidence that the respondents received a complaint from the complainant in August 2009 and that such complaint was assigned to the Internal Affairs Division. It is not evidence that an investigation was indeed conducted, nor is it evidence that, if an investigation was conducted, that the respondents maintain any such 2009 records at this time.

18. Based on the facts and circumstances of this case, it is found that the respondents do not maintain the requested records.

19. It is concluded that the respondents did not violate the FOI Act, as alleged in the complaint.

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.

2. The complainant is admonished for his conduct during the hearing, including the conduct described in paragraph 15 of the findings, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 14, 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:

KACEY LEWIS, #165480, MacDougall-Walker Correctional Institution, 1153 East Street, South, Suffield, CT 06080

CHIEF, POLICE DEPARTMENT, CITY OF WATERBURY; AND **POLICE DEPARTMENT, CITY OF WATERBURY**, c/o Attorney Richard J. Scappini, City of Waterbury, 235 Grand Street, Waterbury, CT 06702

Cynthia A. Cannata
Acting Clerk of the Commission

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