

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  
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Apostle Immigrant Services and  
St. Rose of Lima Church,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2009-665

Leonard Gallo, Chief, Police Department,  
Town of East Haven; and Police Department,  
Town of East Haven,

Respondent(s)

April 7, 2010

Transmittal of Proposed Final Decision

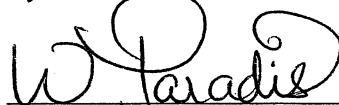
In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

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, April 28, 2010**. 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 APRIL 16, 2010**. 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 twelve (12) copies** be filed **ON OR BEFORE APRIL 16, 2010**. **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 **twelve (12) copies** be filed **ON OR BEFORE APRIL 16, 2010**, 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: Michael Wishnie, Esq. & Tafari Lumumba  
Patricia A. Cofrancesco, Esq.  
Richard D. Gudis, Esq.

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Apostle Immigrant Services and  
St. Rose of Lima Church,

Complainants

against

Docket #FIC 2009-665

Leonard Gallo, Chief, Police Department,  
Town of East Haven; and Police  
Department, Town of East Haven,

Respondents

April 7, 2010

The above-captioned matter was heard as a contested case on February 22, 2010, at which time the complainants and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. The Hearing Officer granted the motion of Officers Dennis Spaulding, Jason Zullo, and David Cari to intervene as parties. 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 on October 16, 2009, the complainants made a written request for 11 categories of records:

[a.] All records of or related to complaints filed against Officer Dennis Spaulding, Cari, and Zullo of the East Haven Police Department ("the Department"), including but not limited to complaints filed regarding the professional conduct of Officer Spaulding, Cari and Zullo, and any disciplinary files or investigations resulting from any such complaints.

[b.] All records, including but not limited to any instructions, protocols, guidelines or other materials, regarding the training of Officers Dennis Spaulding, Cari, and Zullo.

We also request all records at any point from June 1, 2008 to the present related to the following:

- [c.] All records of Traffic Stop Complaint forms, submitted pursuant to Public Act 99-198, An Act Concerning Traffic Stop Statistics, received by the Department.
- [d.] Any records, including but not limited to instructions, protocols, guidelines or other materials, regarding the use of pepper spray, mace, or any other spray authorized for use by the Department.
- [e.] Any records, including but not limited to instructions, protocols, guidelines or other materials, regarding DUI checkpoints in East Haven, Connecticut.
- [f.] Any records, including but not limited to instructions, protocols, guidelines or other materials, regarding police surveillance of East Haven stores and their parking lots.
- [g.] Any records, including but not limited to instructions, protocols, guidelines, or other materials, regarding destruction of identification documents by the Department or its officers.
- [h.] Any records, including but not limited to instructions, protocols, guidelines or other materials, on the Department's taser policy or practices.
- [i.] Any records, including but not limited to instructions, protocols, guidelines or other materials, regarding stopping, pulling over and/or ticketing persons for traffic violations.
- [j.] Any records, including but not limited to instructions, protocols, guidelines or other materials, regarding the documentation of the race of persons involved in traffic violations.
- [k.] All records relating to internal or external investigations, or communications about such investigations, of the Department's use or failure to use any instructions, protocols, guidelines, or other materials requested in items 4 to 10.

3. It is found that on October 20, 2009, the respondents acknowledged the complainants' request for records.

4. By letter received and filed on November 2, 2009, the complainants appealed to the Freedom of Information ("FOI") Commission, alleging that the respondents

violated the FOI Act by failing to provide copies of the requested records, described in paragraph 2, above. The complainants requested the imposition of a civil penalty.

5. It is found that on February 17, 2009, the respondents provided copies of some of the records that were responsive to the complainants' request.

6. 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.

7. 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 inspect such records promptly during regular office or business hours or to receive a copy of such records in accordance with the provisions of section 1-212.

8. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record."

9. It is concluded that the records requested by the complainants, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

10. With respect to the records described in paragraph 2.c, e, and j, above, it is found that the respondents provided such records to the complainant.

11. With respect to the records described in paragraph 2.f, g, and i, above, it is found that the respondents maintain no records that are responsive to the complainants' request.

12. With respect to the records described in paragraph 2.k, above, it is found that any records that the respondents maintain were created subsequent to the complainants' request of October 16, 2009.

13. With respect to the records described in paragraph 2.a, above, it is found that none of the officers objected to the disclosure of such records.

14. It is found that the respondents did not provide any records of complaints filed against Officer Cari. The Commission is unable to find whether the respondents maintain any records concerning complaints filed against Officer Cari. See Paragraph 23, below.

15. It is found that the respondents provided copies of records concerning Officer *Zullo*. It is found that the respondents withheld an incident report associated with a citizen complaint against Officer Zullo because the criminal charges against the subject of the incident report are deemed to be erased, pursuant to §54-142a, G.S.

16. Section 54-142a, G.S., provides:

- (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased....
- (b) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased...
- (e) ...[A]ny law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section.

17. It is found that the respondents did not violate the FOI Act by failing to disclose an incident report pertaining to a charge deemed to be erased pursuant to §54-142a, G.S.

18. With respect to the records described in paragraph 2.a, above, concerning records of complaints and discipline against Officer *Spaulding*, it is found that Officer Spaulding wrote two reports concerning a disciplinary charge in August 2009 and gave both reports to the investigating inspector, who is a member of the East Haven Police Department.

19. It is found that such reports are records responsive to the complainants' request; it is also found that the respondents did not provide copies of such reports to the complainants. It is further found that the respondents failed to provide evidence that they no longer maintain copies of such records.<sup>1</sup>

20. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide copies of the two reports, described in paragraph 18, above.<sup>2</sup>

21. The complainants contend that the respondents failed to prove that their search for records of complaints filed against Officers Zullo, Spaulding and Cari, described in paragraph 2.a, above, was diligent.

22. It is found that the respondents failed to provide evidence that their search for records responsive to the request described in paragraph 2.a, above, was thorough. It is found that the records are maintained in the Chief's office and that the Chief performed the search for the records; however, it is found that the respondents failed to submit sufficiently detailed evidence about the scope of the Chief's search. It is found, moreover, that Exhibit Q, which is a February 11, 2010 memo from Chief Gallo describing the records that were responsive to the request, contradicts the records that the respondents actually provided to the complainants in response to their request described in paragraph 2.a, above.<sup>3</sup>

23. It is concluded, therefore, that the respondents failed to prove that their search for records in response to the request described in paragraph 2.a, above, was diligent.

24. With respect to the records described in paragraph 2.b, above, it is found that the respondents failed to provide training records for Officer Zullo that were created during his employment with Western Connecticut State University. It is found that the respondents only provided Officer Zullo's training records created during his employment with the East Haven Police Department. The respondents claim that the subpoena duces tecum that the complainants had served on the respondents for the

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<sup>1</sup> It is found, in addition, that at least one page is missing from the October 21, 2009 memorandum by Inspector Nappi to Chief Gallo that the respondents provided to the complainants. See Exhibit G, Bate Stamp 000068. The omission may have occurred during the complainants' preparation of the copies of records to enter as an exhibit in the contested case hearing in this matter. It is found that the pages missing from Exhibit G are records responsive to the complainants' request.

<sup>2</sup> If the respondents failed to provide the missing pages of the October 21, 2009 memorandum by Inspector Nappi to Chief Gallo (see footnote 1, above), then it is concluded that the respondents violated the FOI Act by failing to provide such records.

<sup>3</sup> It is found that the memo states that there are two internal complaints against Officer Spaulding, yet actually provided to the complainants were one internal complaint and one civilian complaint. It is found that the memo also states there are no complaints against Officer Zullo, yet the Chief subsequently provided a complaint against Zullo.

hearing in this matter did not require the respondents to provide the training records from Officer Zullo's previous employment as a police officer.

25. It is found, however, that the controlling request for records in this matter is the complainants' written request for records on October 16, 2009. It is found that in that written request (paragraph 2, above), the complainants request "all records ... regarding the training of Officer[ ] ... Zullo[.]" It is found that the scope of the complainants' request includes *all* training records that the respondents maintain, even if such records were created by another police department.

26. It is concluded, therefore, that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the training records for Officer Zullo that were created during his employment with another police department.

27. It is found that the respondents provided the training records for Officers Spaulding and Cari; therefore, the respondents did not violate the FOI Act with respect to that part of the complainants' request for training records that concerns those two officers.

28. With respect to the request for records regarding the use of pepper spray, mace, or any other authorized spray, described in paragraph 2.d, above, it is found that the respondents provided copies of some, but not all, of the records they maintain that are responsive to the request.

29. It is found that the respondents provide Cap-Stun to their officers to use instead of Mace or pepper spray. It is found that whenever an officer deploys Cap-Stun, he or she must complete a "written use of force report," which is attached to and maintained with the case incident report.

30. It is found that such written use of force reports for Cap-Stun are responsive to the complainants' request for records, described in paragraph 2.d, above.

31. It is found that the respondents did not provide any written use of force reports for Cap-Stun to the complainants. The respondents claim that to do so would be too burdensome, because the police department generates about 1,300 incident reports per month and the complainants' request covers 16.5 months.

32. It is concluded, however, that the FOI Act requires a public agency to comply with even a broad request for specific records. Docket #1987-188, Rubinowitz et al. v. Greenwich Emergency Medical Service, et al. ("time-consuming" process of culling response times for disclosure from oversized volume of dispatch records containing lengthy patient and other information does not excuse compliance with complainants' request); Docket #FIC1992-071, Fromer v. New London Director of Law (complainant entitled to records despite respondent's claim that search would be "overly burdensome and time-consuming"); Docket #FIC2000-401, Backman v. Sullivan, Commissioner, State of Connecticut, Department of Transportation (where permits filed by number, agency required to search all permits compiled over a four-year period to comply with

request for names of certain permittees); also see William E. Wildin v. FOIC, 56 Conn. App. 683, 687 (2000) (agency not excused from complying with “burdensome” request).

33. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the records described in paragraph 29, above.

34. With respect to the request for records regarding the respondents’ Taser policy or practices, described in paragraph 2.h, above, it is found that the respondents provided copies of some, but not all, of the records they maintain that are responsive to the request.

35. It is found that whenever an officer deploys a Taser brand electronic control device (“ECD”), the officer must complete a “mandatory written incident report,” which is made part of the case incident report.

36. It is also found that after an ECD is used on a subject, a weapons officer downloads deployment information from the device’s computer data port, generating a “deployment data report” that is maintained with the case incident report.

37. It is found that the deployment data reports and the case incident reports that include mandatory written reports of the use of an ECD are records that are responsive to the complainants’ request for records, described in paragraph 2.h, above. It is found that the respondents failed to provide copies of any such records to the complainants.

38. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by failing to provide the records described in paragraph 37, above.

39. After consideration of the entire record in this case, the Commission declines to consider the imposition of civil penalties against the respondents.

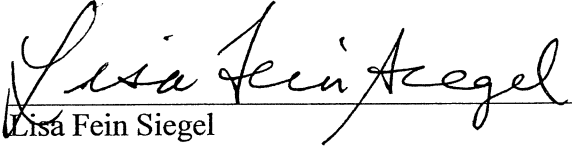
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Forthwith, the respondents shall conduct a diligent search for additional records responsive to the complainants’ request described in paragraph 2.a of the findings of fact. If the respondents discover additional records that they have not provided to the complainants, they shall provide such records to the complainants forthwith. If the respondents do not discover additional records, they shall state such result, along with the steps they took to conduct a diligent search, in an affidavit provided to the complainants forthwith.

2. If the respondents did not provide the omitted pages from the memorandum described in footnote 1, they shall provide such copies of records to the complainants forthwith.



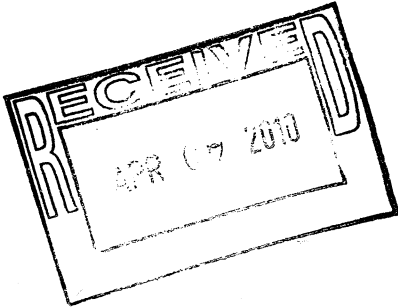
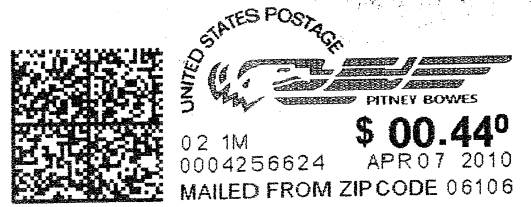
3. Forthwith, the respondents shall provide copies of the records described in paragraphs 18, 24, 29, and 37 of the findings of fact, free of charge.

  
Lisa Fein Siegel  
as Hearing Officer

FIC2009-665/HOR/lfs/040710



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FREEDOM OF INFORMATION COMMISSION  
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