

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by
Robert Cushman,

FINAL DECISION

Complainant

Docket # FIC 2019-0447

against

Commissioner, State of Connecticut,
Department of Emergency Services
and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

August 12, 2020

The above-captioned matter was heard as a contested case on November 14, 2019, at which time the complainant and respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

On December 12, 2019, pursuant to an order of the hearing officer, the respondents submitted three after-filed exhibits, without objection from the complainant, which exhibits have been marked as follows: Respondents' Exhibit A (after-filed): Affidavit of Abi Levesque, dated December 10, 2019; Respondents' Exhibit B (after-filed): Affidavit of Shelley Vincenzo, dated December 10, 2019; Respondents' Exhibit C (after-filed): Affidavit of Carmen A. Rodriguez, dated December 11, 2019.

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 or about July 18, 2019, the complainant hand-delivered a records request to the respondents for copies of the following records:

video, audio, body-cam, and digital recordings of or in the barracks, garage, sally port, booking room and processing room for all Operating Under the Influence C.G.S. Section 14-227a arrests between June 14, 2019 and July 18, 2019 by either the CSP that were brought to Troop A or by any member of the Connecticut State Police Resident Trooper Program that were brought to Troop A, including but not limited to arrestee Raymond Wall, arrest date July 6, 2019. ("July 18th request").

3. It is found that, by letter dated July 19, 2019, the respondents acknowledged the July 18th request, described in paragraph 2, above.

4. By letter received on July 26, 2019, the complainant appealed to the Freedom of Information (“FOI”) Commission alleging that the respondents violated the FOI Act by failing to promptly provide the complainant with copies of all documents responsive to the complainant’s July 18th request.

5. Section 1-200(5), G.S., defines “public records or files” as:

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.

6. 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 section 1-212.

7. Section 1-211(a), G.S., provides in relevant part that:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212.

8. Section 1-212, G.S., provides in relevant part that:

(a) Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record. The type of copy provided shall be within the discretion of the public agency, except (1) the agency shall provide a certified copy whenever requested, and (2) if the applicant does

not have access to a computer or facsimile machine, the public agency shall not send the applicant an electronic or facsimile copy...

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency...

(c) A public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more....

9. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that the July 18th request was submitted to the respondents' IT Department to conduct a search for responsive recordings. It is found that the IT Department located and forwarded a large number of recordings to the respondents' Legal Affairs Unit on or about July 31, 2019 for review. It is found that due to the volume of recordings sought and retrieved, the July 18th request was assigned to three paralegals (i.e., Abi Levesque, Shelley Vincenzo, Carmen Rodriquez) within the Legal Affairs Unit to process. It is found that the respondents determined that given the number and size of responsive recordings, it would be more efficient to put all videos related to one incident on a single USB drive rather than multiple compact discs. It is found that as of the time of the hearing in this matter, the respondents had spent at least 31 hours processing (including organizing, reviewing, redacting, downloading) the July 18th request, while working on numerous other FOI requests.

11. It is found that by letter dated August 9, 2019, the respondents informed the complainant that "there are 12 files for which video recordings exist. Said files will be placed on USB drives and the cost of each USB drive is \$9.47 for a total estimated fee of \$113.64. Upon the receipt of your check in the amount of \$113.64 made payable to the Department of Emergency Services and Public Protection, we will commence the downloading of video footage to [an] USB [drive]."

12. It is found that on October 2, 2019, prior to the initially scheduled hearing in this matter, the respondents, upon agreement of the parties, agreed to provide the complainant with compact discs containing only processing room video recordings responsive to the July 18th request. The parties then jointly moved to postpone the hearing, which motion was granted.

13. It is found that on or about October 3, 2019, the three paralegals who had been assigned to process the July 18th request were instructed by the Legal Director and the Supervising Attorney in the Legal Affairs Unit to cease review of any video recordings in connection with such request due to non-payment by the complainant, except for the processing room recordings described in paragraph 12, above.

14. It is found that by letter dated October 23, 2019, the respondents provided the

complainant with eight compact discs containing processing room video recordings for eight separate incidents responsive to his July 18th request, free of charge.¹ In their October 23rd letter, the respondents also informed the complainant that there were certain incidents previously identified on October 2nd that were out of troops other than Troop A, and therefore not responsive to his July 18th request; and other incidents previously identified for which no video recordings were available.

15. It is also found that in their October 23rd letter, described in paragraph 14, above, the respondents informed the complainant that there was booking footage from a trooper's body worn camera (BWC) video footage for three incidents (for which there were no processing room videos) that would be made available upon prepayment of the fees associated with the production of such footage.² The respondents noted that the BWC video footage was too large to be placed on compact discs and required the use of USB drives to accommodate its size. They informed the complainant that the cost for each USB drive was \$9.47 for a total estimated fee of \$28.41. In addition, the respondents informed the complainant that the review and production of the BWC video footage would commence after payment was received from the complainant.

16. At the November 14th hearing, the complainant acknowledged that he had been provided with certain processing room video recordings and narrowed the incidents for which he still sought records to those incidents identified as: CFS# 1900344916, CFS# 1900341731, CFS# 1900325281, CFS# 1900313003, CFS# 1900299643, CFS# 1900311321, CFS# 1900314222, CFS# 1900309565 and CFS# 1900311114. The complainant also contended that the respondents failed to promptly provide him with records responsive to his July 18th request, and challenged the respondents' request for prepayment for the BWC footage on the USB drives.

17. With respect to CFS# 1900314222 and CFS# 1900309565, it is found that motor vehicle recordings (MVR) and BWC video footage associated with such incidents exist. It is found that due to its size the respondents downloaded the BWC footage (with redactions) onto USB drives and requested prepayment from the complainant as described in paragraph 15, above. It is found that, as of the time of the hearing, the complainant had not remitted the requested payment.

18. With respect to CFS #1900311114, at the November 14th hearing, the respondents contended that they had to download BWC footage associated with such incident onto a USB drive due to its size, and for which they requested prepayment as described in paragraph 15, above. In her affidavit (Respondents' Exhibit C), Ms. Rodriguez, attests that such file had yet to be reviewed. It is found that, as of the time of the hearing, the complainant had not remitted the requested payment.

19. With respect to CFS# 1900344916, CFS# 1900341731, CFS# 1900325281 and CFS#

¹ The eight compact discs described in paragraph 14, above, are associated with incidents CFS# 1900344916, CFS# 1900341731, CFS# 1900325281, CFS# 1900324687, CFS# 1900313003, CFS# 1900311321, CFS# 1900311106 and CFS# 1900299643.

² The three incidents described in paragraph 15, above, are CFS# 1900314222, CFS# 1900309565 and CFS# 1900311114.

1900313003, it is found that in addition to the processing room recordings that were previously provided to the complainant, as described in paragraph 14, above, there also exist MVR and/or BWC footage associated with such incidents, which have yet to be reviewed and provided to the complainant. The respondents contended that they ceased to review such files because “of the expressed indication and expectation of non-payment”.

20. With respect to CFS# 1900299643, it is found that in addition to the processing room recording that was previously provided to the complainant, as described in paragraph 14, above, there also exist MVR and BWC footage associated with such file which have not been provided to the complainant. It is unclear from the record whether such MVR and BWC footage have in fact been reviewed by the respondents.³

21. With respect to CFS# 1900311321, it is found that in addition to the processing room recording that was previously provided to the complainant, as described in paragraph 14, above, there exists MVR and BWC footage associated with such file, which was reviewed by the respondents, but which has yet to be provided to the complainant. It is found that the respondents redacted the BWC footage and necessarily put it onto a USB drive.

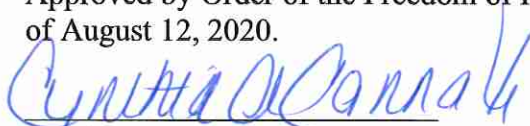
22. It is found that the respondents ceased processing the July 18th request, and did not provide the complainant with copies of the responsive records for which they had already completed their review, because the complainant refused to make the requested payments.

23. It is found that the fee for copies of the requested records was more than ten dollars and therefore the respondents were permitted to require prepayment of such fees pursuant to §1-212(c), G.S. Because the respondents are entitled to request prepayment for the copying fees, and because the complainant refused to make such payment, it is concluded that the respondents did not deny the complainant copies of the requested records. Based on the specific facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 12, 2020.



Cynthia A. Cannata
Acting Clerk of the Commission

³ In her affidavit (Respondents' Exhibit A), Ms. Levesque attests that she reviewed the MVR and BWC footage associated with CFS# 1900299643 and that neither required any redactions. However, Ms. Rodriguez, in her affidavit (Respondents' Exhibit C), attests that the MVR and BWC recordings associated with such file have yet to be reviewed.

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:

ROBERT CUSHMAN, c/o Attorney Robert A. Cushman, Law Offices of Robert A. Cushman, LLC, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Janet Ainsworth, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission