

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Christopher and Summer Dionne,

Complainants

against

Docket #FIC 2019-0396

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

Respondents

December 9, 2020

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

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 5, 2019<sup>1</sup>, the complainants appealed to the Commission, alleging:

We have attempted to retrieve the below information and have not received it. Both police officers have objected to the release of their personnel files and their attorney will not release 13 body camera discs that we have requested. We also have home security and cell phone footage of the officers with a key to our house and lying on a warrant application....

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<sup>1</sup> On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. Sec. 1-206(b)(1), which requires the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M is applicable to any appeal pending with the Commission on the issuance date and to any appeal filed on or after such date, for the duration of the current public health and civil preparedness emergency. Consequently, the Commission retains jurisdiction.

officers with a key to our house and lying on a warrant application....

3. It is found that the complainants made a May 1, 2019 request to the respondents for:

(1) Any/all audio and visual recordings involving Mr. Christopher John Dionne and/or the Dionne family residence located at 4 Village Lane in Old Lyme CT 06371. This is not limited to, but should include the following:

a. Any/all interactions between Connecticut State Police employee Kazimera Morse (#426) and Mr. Christopher John Dionne, Summer Sage Dionne, and their children.

b. Any/all occasions Connecticut State Police employee Kazimera Morse responded to/visited the Dionne family residence for any reason. We are also requesting dash and body cameras for all officers and vehicles that have ever accompanied Kazimera Morse.

c. A complete record of any/all malfunctions experienced by Connecticut State Police employee Kazimera Morse's vehicle dash camera and body camera for May 22, 2018 and the entire month of May 2018.

d. A complete record of all Connecticut State Police dash cam malfunctions and body cam malfunctions from 01-01-2017 to 04-30-2019 in Troop F (Westbrook).

e. Any/all audio and visual recordings from the body camera and dash camera of Connecticut State Police employee Angello Balbuena (#1416) on 04-11-2019. Including, but not limited to, his interaction with Christopher John Dionne at 4 Village Lane the evening of 04-11-2019.

f. Any all interactions while Mr. Christopher John Dionne was in custody (01-29-18 and 04-25-19).

(2) The personnel file for Connecticut State Police Employee Kazimera Morse (#426).

a. All records documenting discipline of every type, and the records that document all incidents examined to determine the discipline. This would include employee counseling, written reprimand, recommendation regarding loss of leave, recommendation to suspend (paper and non-paper suspensions), recommendation to demote, recommendation to transfer, and recommendation to terminate. These records may include written records, video, audio, and photos collected and examined by the Connecticut State Police as part of

disciplinary investigations and internal affairs investigations of incidents involving Kazimera Morse (#426).

b. All records documenting all training received by Kazimera Morse (#426)

(3) The personnel file for Connecticut State Police employee Angello Balbuena (#1416).

a. All records documenting discipline of every type, and the records that document all incidents examined to determine the discipline. This would include employee counseling, written reprimand, recommendation regarding loss of leave, recommendation to suspend (paper and non-paper suspensions), recommendation to demote, recommendation to transfer, and recommendation to terminate. These records may include written records, video, audio, and photos collected and examined by the Connecticut State Police as part of disciplinary investigations and internal affairs investigations of incidents involving Connecticut State [Police] employee Angello Balbuena.

b. All records documenting all training received by Connecticut State Police employee Angello Balbuena, including, but not limited to, trooper trainee documentation.

(4) A complete record of all calls/complaints received involving Christopher John Dionne or his family residence at 4 Village Lane Old Lyme. We are also requesting any/all notes, audio recordings, video recordings, statements by complainant(s) and responding State Police Employee.

4. It is found that the respondents acknowledged the request on May 8, 2019.
5. It is found that the respondents conducted a diligent search for the requested records.
6. It is found that the respondents denied portions of the request on June 28, 2019.

7. 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.

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 section 1-212.

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

10. It is concluded that the requested records are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

11. At the hearing, the parties identified two unresolved issues: first, the respondents’ denial of the complainants’ request for personnel records, including disciplinary and training records contained within personnel files; and second, the complainants’ unfulfilled request for an unredacted recording.

12. With respect to the complainants’ request for records contained within personnel files, including records of discipline, the respondents contended that every record contained within an employee’s personnel file is exempt from disclosure pursuant to §5-278, G.S.

13. Section 5-278(e), G.S., provides in relevant part:

Where there is a conflict between any agreement or arbitration award approved in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections, and any general statute or special act, or regulations adopted by any state agency, the terms of such agreement or arbitration award shall prevail . . .

14. It is found the 2018-2022 State Police (NP-1) Bargaining Unit Contract was approved by the Legislature on May 31, 2019 and was effective on that date.

15. It is found that Article 9 Section Two of the Bargaining Unit Contract provides in relevant part:

An employee’s [official personnel file] and internal affairs investigations with only a disposition of “Exonerated, Unfounded or Not Sustained” shall not be subject to the Connecticut Freedom of Information Act.

16. It is found that Article 9 Section Two of the Bargaining Unit Contract was in effect at the time of the respondents’ denial, described in paragraph 6, above.

17. It is found that the records described in paragraphs 3(2) and 3(3), above, consist of disciplinary records, more fully described in paragraphs 3(2)(a) and 3(3)(a); and training records, more fully described in paragraphs 3(2)(b) and 3(3)(b), above.

18. With respect to the employees' disciplinary records, it is found that the personnel files contain no internal investigations other than those with a disposition of exonerated, unfounded or not sustained.

19. It is therefore concluded that the records described in paragraphs 3(2)(a) and 3(3)(a) were exempt from disclosure pursuant to §5-278(e), G.S., at the time of the denial described in paragraph 6, above, and that the respondents did not violate the FOI Act by withholding those records, as alleged in the complaint.

20. The Commission notes that *after* all times material in this matter, the legislature passed House Bill 6004 (July 2020 Spec. Session, P.A. 20-1), signed by the Governor on July 31, 2020, which provides:

For any agreement or arbitration award approved before, on or after the effective date of this section, in accordance with the provisions of sections 5-270 to 5-280, inclusive, on matters appropriate to collective bargaining, as defined in said sections, where any provision in such agreement or award pertaining to the disclosure of disciplinary matters or alleged misconduct would prevent the disclosure of documents required to be disclosed under the provisions of the Freedom of Information Act, as defined in section 1-200, the provisions of the Freedom of Information Act shall prevail.

21. Accordingly, should the unsubstantiated disciplinary records described in paragraphs (3)(2)(a) and (3)(3)(a), above, be requested today, §5-278(e), G.S., would not operate to exempt them from disclosure.

22. With respect to the training records described in paragraphs 3(2)(b) and 3(3)(b), above, the respondents maintain that these records also were exempt from disclosure at the time of the complainants' request.

23. It is concluded, however, that the respondents' construction of §5-278(e), G.S., to exempt *all* records, not just unfounded disciplinary records, in an employee's personnel file, would render the specific protections in the bargaining unit contract for unsubstantiated misconduct superfluous. That is, if §5-278(e), G.S., operated to exempt *all* records in an employee's personnel file, then there would be no need for the bargaining unit contract to specify that disciplinary records of unsubstantiated misconduct in particular (which are also personnel records) are exempt from disclosure.

24. It is therefore concluded that §5-278(e), G.S., does not exempt the training records contained in the requested personnel files.

25. This conclusion is buttressed by the legislative history of the Senate resolution approving the bargaining unit contract. See Proceedings of the Connecticut Senate 2019, Vol. 62 Part 5, pages 3424-3427:

SENATOR WINFIELD (10<sup>TH</sup>):

Yes, Thank you, Madam President. In discussion about this contract, there's been some concern about freedom of information and files associated with the contract so I just want to ask a couple of questions for clarification. So in Article 9 of the contract, I believe there's a provision that concerns the access to the employee's personnel file that is part of this larger discussion and I guess the question is, *is the intent therein to restrict access to the entirety of the file?* Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN (19<sup>TH</sup>):

Thank you very much Madam President. *The answer to that would be no.*

THE CHAIR:

Senator Winfield.

SENATOR WINFIELD (10<sup>TH</sup>):

And so I guess a follow up to that, Madam President, and through you, Madam President is then what does the restriction actually do? Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN (19<sup>TH</sup>):

Thank you very much, Madam President. In the tentative agreement on personnel files, an employee's officer [sic] personnel file and internal investigations with only a disposition of exonerated, unfounded or not sustained shall not be subject to the Connecticut Freedom of Information Act *in order to not have an employee judged when he or she has not been found to be held culpable.* Through you, Madam President.

THE CHAIR:

Thank you. Senator Winfield.

SENATOR WINFIELD (10<sup>TH</sup>):

Thank you, Madam President. And through you, *just for clarity, I think that means that everything else is still subject [to the FOI Act] ....*

[Emphases added.]

26. It is therefore concluded that the respondents violated the FOI Act by failing to disclose the requested training records.

27. With respect to the redacted recording described in paragraph 11, above, it is found that a copy of a video recording was provided by the respondents to the State's Attorney's Office. That Office redacted an audio portion of that recording reflecting a comment that a case was "he said-she said," and the complainants received only the redacted version of the recording.

28. It is found that the respondents retain an unredacted copy of the recording, for which the respondents did not claim an exemption from disclosure.

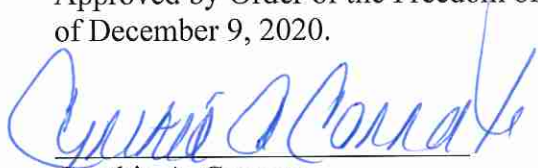
29. It is concluded that the redacted audio is not exempt from disclosure, and that the respondents violated the FOI Act by failing to disclose it.

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

1. The respondents shall forthwith provide the complainants with copies of the requested training records described in paragraphs 3(2)(b) and 3(3)(b) of the findings, above.

2. The respondents shall forthwith provide the complainants with a copy of the requested video recording described in paragraphs 27-28, above, without redacting the audio portion described in paragraph 27, above.

Approved by Order of the Freedom of Information Commission at its regular meeting of December 9, 2020.



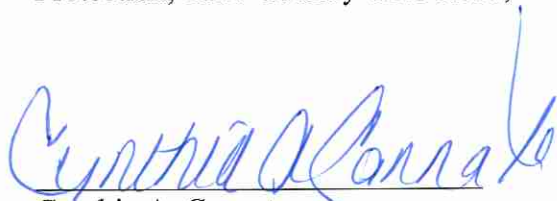
Cynthia A. Cannata  
Acting Clerk of the Commission

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:

**CHRISTOPHER AND SUMMER DIONNE**, 4 Village Lane, Old Lyme, CT 06371

**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 Douglas Sauve, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata  
Acting Clerk of the Commission