

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jonathan Shugarts and
The Republican-American Newspaper

Complainants

against

Docket #FIC 2019-0414

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

February 13, 2020

Respondents

The above-captioned matter was heard as a contested case on October 22, 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 dated July 15, 2019, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide records responsive to their June 17, 2019 request. The complainants seek for the Commission to impose civil penalties against the respondents
3. It is found that, on June 17, 2019, the complainants made a request for the following records:
 - a. Access to and copies of any and all visual and/or audio recordings composed on December 4, 2018 by onboard cameras or body-worn cameras installed in any and all state police vehicles that were involved in CFS# 1800581771.
 - b. Access to and copies of any and all investigative reports compiled in connection to the above referenced CFS# 1800581771.

4. It is found that the request included directions that the visual recordings be placed on a CD or other digital media format as they become available. Additionally, the complainants stated that the subject matter was of urgent public importance and directed the respondents to give the matter prompt and immediate attention.

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

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.

6. 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 (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.

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

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

9. It is found that by letter dated June 24, 2019, the respondents acknowledged the complainants’ request. The letter informed the complainants that their requests for audio and video recordings would be processed by the legal affairs unit and that a request for accident reports and photographs would be handled by the Reports and Records Unit. The letter also informed the complainants that there was a substantial backlog in the Reports and Records Unit.

10. At the hearing on this matter, there was a dispute as to whether the request included a request for photographs. However, it is found that while the complainants’ request does not specifically cite an accident report or photographs, such request is broad in that it requests, “any and all visual and/or audio recordings...” as well as, “any and all investigative reports....” Therefore, it was reasonable for the respondents to conclude that the request included a request for such accident report and photographs.

11. It is found that the processing of FOI requests and requests for law enforcement records are handled by different units within the respondents' agency based on the type of information or records requested. Freedom of information requests are coordinated by personnel from the legal services unit. Requests for law enforcement records and reports are directed to the agency's records and reports unit. Requests for audio and video records, which include mobile video recordings as well as body-worn video recordings, are distributed to the specific state police troop (barracks) where the event occurred. Finally, requests for 9-1-1 or other dispatch recordings are forwarded to the message center, which oversees statewide communications and maintains such records.

12. It is found that on June 24, 2019, the respondents' legal affairs unit forwarded memoranda to CT State Police Troop A as well as the CT State Police Message Center requesting that they search for video and audio recordings pertaining to CFS18-00581771.

13. It is found that on June 25, 2019, the respondents' legal affairs unit received an email from a Troop A representative in response to the inquiry into the existence of videos pertaining to CFS18-00581771. The email stated, "Troop A does not hold any videos in evidence."

14. It is found that by letter dated July 11, 2019, the respondents informed the complainants that a criminal prosecution was pending regarding CFS#1800581771, and that, "pursuant to Connecticut General Statutes Section 1-215 all that is publicly disclosable at this time is the news release, a copy of which will be provided upon your request." The letter further informed the complainants that they may be able to obtain information from the State's Attorney's office handling the prosecution.

15. Connecticut General Statute 1-215 states:

(a) For the purposes of this section, "record of the arrest" means (1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and (2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the

arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (3) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. At all other times, the applicable provisions of the Freedom of Information Act concerning the disclosure of such record shall govern.

16. Regarding the respondents' letter of July 11, 2019, and discussed in paragraph 14 above, it is found that the letter articulates an incorrect summary of §1-215, G.S., in that the referenced statute requires that the "record of arrest", as defined in subsection (a), "shall be a public record from the time of such arrest and shall be disclosed...." The statute does not

provide for a “news release” to serve as compliance with an FOI request.¹

17. Therefore, it is found that the respondents violated the Act when they failed to release the requested records promptly and instead asserted that only a “news release” was disclosable. After informing the complainants that only a “news release” was disclosable, the respondents did not provide the complainants with such news release.

18. It is found that on July 31, 2019, the respondents contacted Supervisory Assistant State’s Attorney Catherine Austin and informed her of the pending FOI request and asked if the requested report, audio and video files (although the respondents acknowledged in the message that there were no video files) should be withheld in light of the pending case. The following day Ms. Austin replied that there was no objection to releasing the requested records.

19. It is found that the respondents’ practice of asking the state’s attorney if a report can be released is not an action sanctioned by statute. Instead, §1-215(d), G.S., directs the agency only to provide written notice to the state’s attorney of the district where the arrest occurred, when there is a request for any other public record [other than those described in §1-215(a) and (b), G.S., as referenced in paragraph 15 above] of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending.” The statute authorizes the state’s attorney the opportunity to intervene in any proceeding before the FOI Commission concerning such request.

20. In their post-hearing brief, the respondents argued that the complainants’ appeal is moot in that there is no current valid complaint pending before the Commission and therefore, the appeal should be dismissed. The respondents agreed that at the time the appeal was filed with the Commission, the requested records had not yet been provided, however, the respondents argued that since the filing of the appeal, they have provided all of the requested records. The respondents contended that the only issue contained in the appeal before the Commission is non-compliance; therefore no other complaint can be addressed. The respondents cite Docket # FIC 2013-589; Torlai v. Commissioner, State of CT, v. DESPP (June 11, 2014). However, this matter is distinguished from Torlai in that the matter before the Commission in Torlai was a complaint of non-compliance with a previous order of the Commission. In the current matter, the complainants specifically complain about the respondents’ failure to promptly comply with their records request. A promptness request cannot be rendered moot through the act of providing records at a later time.

21. It is found that the complainants requested records regarding CFS number 1800581771 and the subsequent responses by the respondents pertained to that CFS number. In the days immediately prior to the hearing on this matter, the respondents discovered that there was another CFS number (1800581804) associated with records pertaining to the incident documented by the original CFS number. The respondents were not able to explain why the existence of this second CFS number was not discovered during their earlier searches. The respondents determined that video records associated with the incident documented by the original CFS number were filed under this second CFS number. Such records were reviewed and

¹ Public Act 15-164 expanded the information that must be released during the pendency of a prosecution. In addition to a number of other changes, the Public Act deleted reference to a “news release” as a record that would satisfy an FOI inquiry in the wake of an arrest. The Public Act took effect October 1, 2015.

released to the complainants at the hearing on October 22, 2019.

22. It is found that the complainants have received all of the records requested. However, it is concluded that the respondents violated the promptness provisions of the FOI Act as alleged in the complaint.

23. Based on the specific facts and circumstances of this case, the Commission declines to impose a civil penalty in this matter.

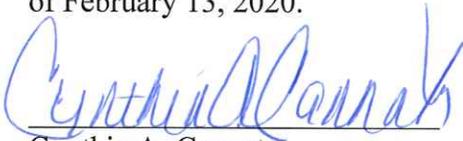
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

2. The respondents shall conduct a review of their response to a request for records when prosecution is pending and shall ensure such records are disclosed promptly pursuant to §1-215, G.S.

3. In addition, within 30 days of the Notice of Final Decision in this matter, the respondents shall contact the Commission to arrange for training to be conducted by Commission staff for all personnel who are responsible for handling freedom of information requests on behalf of the respondents.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 13, 2020.



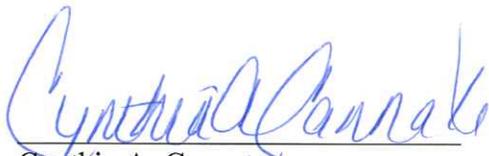
Cynthia A. Cannata
Acting Clerk of the Commission

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:

JONATHAN SHUGARTS AND THE REPUBLICAN-AMERICAN NEWSPAPER, c/o Thomas G. Parisot, Esq., Secor, Cassidy & McPartland, P.C., 41 Church Street, Waterbury, CT 06702

JAMES ROVELLA, 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 Jay T. DonFrancisco, Dept. of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission