

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ethan Book,

Complainant

against

Docket #FIC 2019-0281

Mayor, City of Shelton; and City of Shelton,

Respondents

July 8, 2020

The above-captioned matter was heard as a contested case on December 2, 2019 and February 11, 2020, at which time the complainant and the respondents appeared, and presented testimony, exhibits and argument on the complaint.

Immediately following the December 2, 2019 hearing, the hearing officer ordered the respondents to submit additional evidence. Affidavits were received and filed with the Commission on December 23, 2019. The affidavits have been marked as Respondents' after-filed 2: Affidavit of John P. Bashar (two-pages) and Respondents' after-filed exhibit 3: Affidavit of Robert Kozlowsky (one-page).

Immediately following the February 11, 2020 hearing, the hearing officer ordered the complainant to submit an e-mail communication the complainant testified he received from counsel to the respondents in acknowledgment of his April 25, 2019 FOI Act request. On February 13, 2020 the complainant filed with the Commission an email, dated July 26, 2019, and two additional documents for which he sought admission. For the reasons set forth below, each exhibit has been marked for identification purposes only as Complainant's after-filed exhibit H, Complainant's after-filed exhibit I, and Complainant's after-filed exhibit 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 letters dated April 22 and 25, 2019, the complainant made a request to the Mayor of the City of Shelton for the following records:
  - a. April 22, 2019: "documentation which reflects the compensation broken down by straight salary, overtime and other compensation for Police Department officials Michael

McPadden and Matthew Kunkel for the years 2015, 2016, 2017 and 2018.

- b. April 25, 2019:
- i. On or about September 18, 2018, you provided me with information regarding hours clocked in for work by Christopher Rosario, a clerk with the City of Shelton Police Department, for the time period of August 21, 2017 through August 21, 2018 . . . I now ask that you provide me with information in a similar format as was provided previously for hours clocked in for work by Mr. Rosario from October 5, 2018 to the present.
  - ii. A copy of Mr. Rosario's W-2 tax form given to him by the City for the 2018 calendar year (with the understanding that his Social Security number may be redacted).
  - iii. Access to the video recording of the Shelton Police Department time clock for the period of March 1, 2019 to the present.
  - iv. A copy of Mr. Rosario's pay stubs for periods from January 1, 2019 to the present.

3. The complainant testified during the December 2, 2019 hearing that within days of his April 25, 2019 FOI Act request, counsel to the respondents emailed him in acknowledgement of his FOI Act requests. The hearing officer ordered the complainant to provide this email to the Commission to be marked as evidence, but the complainant did not provide such email. Instead, the complainant filed with the Commission a July 26, 2019 email from Attorney Cotter's staff regarding postponement of the hearing in this matter.<sup>1</sup>

4. However, during cross-examination at the February 11, 2020 hearing, the complainant acknowledged that he and counsel to the respondents communicated about his pending requests as early as mid-May 2019.

5. By letter of complaint filed May 15, 2019, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with records responsive to the requests described in paragraph 2, above. The complainant raised issues of "non-response and willful delays."

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<sup>1</sup> The complainant also submitted two additional documents which this hearing officer found to be irrelevant and immaterial to the issues before the Commission in this matter and therefore such documents are marked for identification purposes only as Complainant's after-filed exhibits I and J.

6. Section 1-200(5), G.S., defines “public records or files” as “[a]ny 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 (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. (Emphasis added).

8. 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.”

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

10. During the December 2, 2019 hearing, the complainant testified that on or about October 10, 2019, the respondents provided him with records responsive to his request identified in paragraphs 2(a) and 2(b)(i), (ii), and (iv), above, and that the only issue that is the subject of the contested case hearing in this matter is whether the respondents violated the FOI Act by failing to provide records responsive to his request identified in paragraph 2(b)(iii), above. Consequently, the Commission will only address whether the respondents violated the FOI Act by failing to provide records responsive to the complainant's request for “access to the video recording of the Shelton Police Department time clock for the period of March 1, 2019 to the present,” as identified in paragraph 2(b)(iii), above.<sup>2</sup>

11. It is found that the respondent Mayor and Mayor's Office do not maintain any records responsive to the request described in paragraph 2(b)(iii), above; rather, it is found that such records are maintained by the Shelton Police Department.

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<sup>2</sup> During the February 11, 2020 continued hearing the complainant argued that the respondents violated the promptness requirement of the FOI Act with respect to the records provided to him in response to his request identified in paragraph 2(a) and 2(b)(i)(ii) and (iv), above. However, the complainant abandoned the issue of promptness during the December 2, 2019 hearing. At that time the hearing officer asked the complainant whether he was satisfied with the respondents' production of responsive records, to which he replied yes, and the complainant also confirmed on cross examination that the respondents complied with both his April 22, 2019 and February 25, 2019 requests, with the exception of that part of the request identified in paragraph 2(b)(iii), above. It is also noted that this hearing officer ordered the parties to appear at a continued hearing on February 11, 2020 solely for the purpose of taking additional evidence pertinent to the complainant's request identified in paragraph 2(b)(iii), above and the complainant did not object to the limited scope of the continued hearing.

12. The complainant contends that the respondents should be authorized and have a duty to retrieve records maintained by the police department. However, it is found that, under the FOI Act, the respondents do not have a duty to retrieve records of other city departments in response to a public records request. See James A. Lash, First Selectman of the Town of Greenwich, et al. v. Freedom of Information Commission, et al., 116 Conn. App. 171, 187 (2009) (as distinct agencies, the first selectman had no duty to maintain or make available the records of the town's law department, and the law department had no duty to maintain or make available the records of the first selectman), and Chikara v. Governor, State of Connecticut, Docket #FIC 1996-556 (August 27, 1997) (the responsibility to provide copies of records rests with the agency which maintains and has custody of the requested records). It is further found that the complainant, at the time of the April 25, 2019 FOI Act request, was on notice of this precedent. See Ethan Book v. Mayor, City of Bridgeport, et al., Docket #FIC 2018-0401 (finding that the respondents were not legally bound to go to the City Clerk and collect that agency's land records in order to fulfill a FOI Act request made to the Mayor's Office in reliance upon the decision in Lash).

13. Nonetheless, it is found that the respondents inquired with the Shelton Police Department about whether it maintains any records responsive to the complainant's request identified in paragraph 2(b)(iii), above. By the time of such inquiry the police department no longer retained any records responsive to the complainant's request because the video footage at issue is automatically recorded over every thirty days. Consequently, the Shelton Police Department does not maintain any records responsive to the complainant's request.

14. Based on the foregoing, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by failing to provide records responsive to the complainant's request set forth in paragraph 2(b)(iii), above.

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 July 8, 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:

**ETHAN BOOK**, 144 Coleman Street, Bridgeport, CT 06604

**MAYOR, CITY OF SHELTON; AND CITY OF SHELTON**, c/o Attorney Thomas G. Cotter, The Cotter Law Firm LLC, 33 King Street, Stratford, CT 06615 and Attorney Francis A. Teodosio, Teodosio Stanek, LLC, 375 Bridgeport Avenue, Shelton, CT 06484



Cynthia A. Cannata  
Acting Clerk of the Commission