

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Ethan Book,

Complainant

against

Docket # FIC 2020-0140

Mayor, City of Shelton; Chief, Police
Department, City of Shelton; Police
Department, City of Shelton; and City of
Shelton,

Respondents

May 12, 2021

The above-captioned matter was heard as a contested case on January 5, 2021, and February 4, 2021, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. Due to the COVID-19 pandemic and the state's response to it, both hearings were conducted telephonically.¹

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 March 20, 2020², the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his request for certain public records. On brief, the complainant requested the Commission consider the imposition of a civil penalty against the respondents.
3. It is found that, by letter dated February 11, 2020, the complainant requested that the respondents provide him with copies of the following records:
 - (a) Documentation which reflects the actual hours that police department employee Christopher Rosario was clocked in for his part-time position for the period of December 1, 2019, to

¹ On March 14, 2020, the Governor issued Executive Order 7B, which suspended the requirement to conduct public meetings in person.

² 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.

the present (seeking the specific periods of time clocked in and not simply the number of hours clocked in).

- (b) A copy of Mr. Rosario's pay stubs for the period beginning December 1, 2019 to the present.
- (c) Either access to or a copy of the video recording of the police department time clock for the period of December 1, 2019, to the present.
- (d) Documentation which reflects the date at which Mr. Rosario terminated or was terminated from his part-time position with the police department.

4. Section 1-200(5), G.S., provides:

"[p]ublic 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, 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.

5. Section 1-210(a), G.S., provides in relevant part that:

[e]xcept 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.

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

7. It is found that the records described in paragraph 3, above, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that, in a letter dated February 13, 2020, the respondents acknowledged the complainant's request and indicated they were in the process of gathering responsive records.

9. It is found that, in a subsequent letter to the complainant dated March 9, 2020, the respondents informed the complainant that the video records described in paragraph 3(c), above, were not available because the recording system overwrites previously recorded video every thirty days. The letter went on to explain that the respondents downloaded video dated February 2, 2020 through March 3, 2020, and such video was transferred to an external hard drive and was available for pick up by the complainant. It is found that, although the letter indicates that the first date of video is February 2, 2020, subsequent testimony at hearing revealed that the date of

the earliest downloaded video was February 1, 2020.

10. It is found that the March 9, 2020, letter referenced in paragraph 9, above, was sent to the complainant via email at his known email address of “newenglimo@aol.com” on March 24, 2020. However, the complainant testified that he never saw the March 24, 2020, email and therefore was not aware of the March 9, 2020, letter from the respondents informing him the video was ready for pick up until he was given a copy of the letter at a meeting with the respondents on December 7, 2020. It is found that the respondents attempted to provide the video records described in paragraph 3(c), above, to the complainant when the respondents notified him at his known email address that such video records were ready to be picked up pursuant to §1-212(a), G.S. Additionally, it is found that the respondents are not responsible for the failure of the complainant to see the respondents’ March 24, 2020, email correspondence.

11. It is found that neither the letter dated March 9, 2020, nor the email dated March 24, 2020, provided any information regarding the status of the other records requested by the complainant, and described in paragraphs 3(a), 3(b) and 3(d), above.

12. It is found that between March 24, 2020, and December 1, 2020, the respondents did not have any further contact with the complainant with regard to the availability of the requested records.

13. It is found that, during a meeting between the complainant and the respondents on December 7, 2020, the complainant received a copy of the respondents’ March 9, 2020 letter. Additionally, the complainant was offered the opportunity at that meeting to review all the responsive records and take possession of the hard drive containing the video records. However, the complainant questioned the \$85.00 charge and refused to accept delivery of the hard drive or the other responsive records.

14. It is found that, on December 8, 2020, the complainant sent a letter to the respondents asking for an opportunity to meet again to review the video files and receive copies of the other responsive records. It is found that, on December 18, 2020, the complainant and respondents met and the complainant was provided written responses, as well as copies of the records responsive to the complainant’s request, as described in paragraph 3(a) and 3(b), above. It is further found that the complainant paid the required fee and received the hard drive device containing certain video records in response to the request described in paragraph 3(c), above. Finally, it is found that the respondents did not maintain any records responsive to the complainant’s request as described in paragraph 3(d), above.

15. With regard to the video records described in paragraph 3(c), above, it is found that such recordings were recorded by a video surveillance camera inside the police department and that such camera records activity twenty-four hours a day, seven days a week. Additionally, it is found that the video system retains recordings for thirty days before it records over previously recorded video.

16. It is found that the respondents’ witness, Lt. Kozlowski, was assigned to gather the responsive video records; however Lt. Kozlowski did not recall the date he was assigned to begin gathering the video. Additionally, it is found that Lt. Kozlowski did not know how to stop the recording system from overwriting previously recorded video.

17. It is found that once Lt. Kozlowski realized that he did not have the ability to download such a large amount of video, he requested the assistance of the police department's Systems and Information Manager, Mr. Caponi. It is found that Mr. Caponi copied the video from the server to an external hard drive on March 3, 2020, nineteen days after the respondents acknowledged the complainant's request.

18. It is found that had the respondents taken steps promptly to preserve the previous thirty days of video on February 13, 2020, the date the respondents' acknowledged the complainant's request, the respondents would have been able to provide the complainant with video from approximately January 14, 2020, through the original date of the complainant's request of February 11, 2020. It is found that the respondents' delay in preserving the requested video records resulted in the denial of access to eighteen days of video records. Accordingly, it is concluded that the respondents violated §1-212(a), G.S., by allowing a substantial portion of the requested video records to be overwritten thus denying the complainant prompt access to recordings dated January 14, 2020 through January 31, 2020.

19. The complainant argued that the respondents' disclosure of responsive records on December 18, 2020, was not prompt. The Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission opined that the word "promptly," as used in the Act, means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also provided the following guidance.

The Commission believes that the timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

Several Superior Court decisions have found the Commission's interpretation of the promptness standard reasonable. See Commissioner, Department of Emergency Services and Public Protection v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-18-6047741-S (July 2, 2020, Cordani, J); Torlai v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-16-5017450-S (November 27, 2017, Huddleston, J.); and Smith v. Freedom of Information Commission, Superior Court, judicial district of New Britain, Docket No. CV-12-5015684-S (June 7, 2013, Cohn, J.)

20. It is found that the respondents' disclosure of the records described in paragraphs 3(a) and 3(b), above, was not prompt in that the respondents acknowledged the complainant's request on February 13, 2020 but did not disclose such records until December 18, 2020. Therefore, it is concluded that the respondents violated the promptness provisions of §§1-210(a)

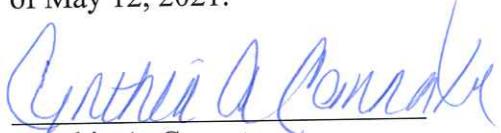
and 1-212(a), G.S., with regard to these specific records.

21. The Commission, in its discretion, declines to consider the imposition of a civil penalty against the respondents under the facts and circumstances of this case.

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 promptness and disclosure requirements set forth in §§1-210 and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of May 12, 2021.



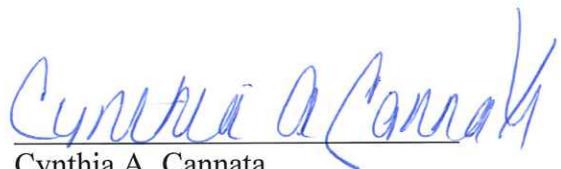
Cynthia A. Cannata
Acting Clerk of the Commission

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; CHIEF, POLICE DEPARTMENT, CITY OF SHELTON; POLICE DEPARTMENT, CITY OF SHELTON; AND CITY OF SHELTON,
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Cynthia A. Cannata
Acting Clerk of the Commission