

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jon Schoenhorn,

Complainant

against

Docket # FIC 2022-0532

Chief, Police Department, Town of
Plainville; Police Department, Town of
Plainville; and Town of Plainville,

Respondents

October 11, 2023

The above-captioned matter was heard as a contested case on March 8, 2023 and August 3, 2023, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint.

On August 18, 2023, the respondents submitted, without objection, an after-filed exhibit, which has been marked as Respondents' Exhibit 1 (after-filed): Affidavit of Christopher Vanghele, Chief, Police Department, Town of Plainville.

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 letter dated and faxed on September 20, 2022, the complainant requested that the respondents provide him with copies of records concerning a motor vehicle accident that occurred on October 29, 2021 on Interstate 84 in Plainville, Connecticut (the "Accident") including the following:

Telephone calls received by the [respondent] department, dispatch calls and radio communications between officers concerning [the Accident], and copies of any dash cam (mvr) videos, or body cameras, and other digital files.

As part of his request, the complainant also stated that he was seeking "not only all written reports, memoranda and other documents prepared by any officer and/or dispatcher, but all recordings of whatever nature, including accident-related photograph[s]."

3. It is found that, by email dated September 21, 2022, the respondents acknowledged the complainant's September 20th request and provided the complainant with copies of certain responsive records, including the Computer Aided Dispatch ("CAD") report as well as

recordings of 911 calls and radio transmissions. It is further found that the respondents separately emailed the complainant an electronic link to access dashboard and body-worn camera video recordings related to the Accident through WatchGuard, the respondent department's mobile video system.

4. It is found that, by email dated November 1, 2022, the respondents forwarded to the complainant additional responsive records, which included copies of telephone calls between the respondent department and the Connecticut State Police ("CSP"), AMR ambulance company, and Lifestar (a critical care helicopter service), as well as additional radio transmissions between the respondent department and the CSP.

5. By letter of complaint filed November 18, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to provide him with copies of certain records responsive to the request, described in paragraph 2, above.

6. 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, videotaped, printed, photostated, photographed or recorded by any other method.

7. 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.

8. 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."

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

10. At the hearings in this matter, the complainant acknowledged that he had been provided with some records responsive to his request, but contended the respondents failed to provide him with all the responsive records, including the entirety of any dispatch transmissions,

911 calls and written documentation or reports related to the Accident. The complainant also contended that he did not receive the dashboard and body-worn camera video recordings of Joseph Henderson, the most senior patrol officer from the respondent department at the scene of the Accident.

11. With respect to the 911 calls and radio transmissions, the chief of the respondent department testified, and it is found, that, beginning on the day after the respondents received the complainant's September 20th request, they searched for, collected, and provided the complainant with responsive records. He also testified, and it is found that, on November 1, 2022, the respondents provided copies of additional phone calls and radio transmissions relating to the Accident. Based upon the credible testimony presented at the hearings as well as the documentary evidence, it is found that the respondents provided all of the telephone calls and radio transmissions responsive to the complainant's September 20th request.

12. With respect to any written reports and documentation related to the Accident, Officer Henderson testified, and it is found, that he did not prepare a written report regarding the Accident and that no other officer from the respondent department would have prepared any such report. The chief of the respondent department testified, and it is found, that the written documentation that existed was provided to the complainant and that the chief did not initiate an internal investigation, nor did he receive any written communications or complaints, concerning the Accident.

13. Much of the testimony in this matter was focused on video footage from Officer Henderson's body-worn and dashboard cameras for the evening of October 29, 2021, the date of the Accident. The respondents testified that they believed they had provided the complainant with Officer Henderson's dashboard video recordings related to the Accident. The respondents also testified that they believed that Officer Henderson's body-worn video was uploaded to the WatchGuard system and likely categorized as "Temporary Light Activation," in which case such video would have only been saved for 90 days and, thereafter, it would have been automatically deleted from the system.

14. Based upon the credible testimony presented at the hearings in this matter as well as the documentary evidence, including Chief Vanghele's Affidavit, it is found that the respondents, well in advance of the hearings, had provided to the complainant the only extant dashboard camera footage taken from the vehicle Officer Henderson had driven to the scene of the Accident.¹

15. Based upon the credible testimony presented at the hearings as well as the documentary evidence, including Chief Vanghele's Affidavit and the attached metadata, it is found that the in-car video recording that was taken by the vehicle that Officer Henderson had driven to the scene of the Accident along with his body-worn video recording of the Accident scene were categorized as "Temporary Light Activation." It is further found that such recordings

¹ At the hearings, the complainant testified that he had received dashboard camera footage for an "Officer Cimadon," but not for Officer Henderson. In his affidavit, Chief Vanghele attested, and it is found, that the vehicle that Officer Henderson drove to the scene of the Accident was "Car 14 under Officer Joseph Cimadon's name," and that the only extant dashboard camera video footage that existed for the vehicle that Officer Henderson was driving on October 29, 2021, was provided to the complainant.

were permanently deleted from the WatchGuard system on February 27, 2022, and that no videos deleted from the system can be retrieved once they are erased. Thus, it is found that the respondents no longer maintained such recordings on September 20, 2022, the date the complainant submitted his request to the respondents.

16. It is found that the respondents conducted reasonably diligent searches and provided the complainant with all responsive records that existed as of the date of the complainant's September 20th request.

17. At the hearings in this matter, the complainant additionally contended that the respondents violated the FOI Act by failing to retain Officer Henderson's body-worn video recording. In particular, the complainant contended that §29-6d, G.S., requires the respondents to comply with the Police Officer Standard and Training Council ("POST") policy regarding the retention of body-worn and dashboard camera footage. The complainant further contended that such policy required the respondents to retain the video recording at issue for a minimum of one year.

18. However, it is well settled that this Commission does not have jurisdiction over matters relating to the retention and destruction of public records. Rather, authority over such matters rests with the Public Records Administrator, pursuant to §§1-18 and 11-8 through 11-8b, G.S., and with the Office of the State's Attorney, pursuant to §1-240, G.S. See Cushman v. Director, Central Communications, City of Middletown, et al., Docket #FIC 2019-0719, ¶22 (Nov. 18, 2020); Montoya v. Superintendent of Schools, Westport Public Schools, et al., Docket #FIC 2019-0607, ¶17 (June 23, 2021); Connolly v. Mayor, City of Hartford, et al., Docket #FIC 1997-397, ¶12 (April 8, 1998); Bahramian v. City and Town of Meriden, et al., Docket #FIC 1979-220, ¶6 (Feb. 26, 1980).

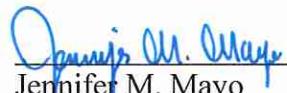
19. With respect to the complainant's contention that §29-6d, G.S., required the respondents to comply with the POST policy regarding the retention of body-worn camera footage, nothing in either the FOI Act or §29-6d, G.S., suggests that the respondents' failure to comply with such policy, as alleged by the complainant, constitutes a violation of the FOI Act.

20. It is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2023.



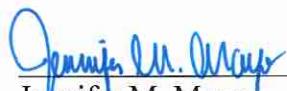
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JON SCHOENHORN, Jon L. Schoenhorn & Associates, LLC, 108 Oak Street, Hartford, CT 06106-1514

CHIEF, POLICE DEPARTMENT, TOWN OF PLAINVILLE; POLICE DEPARTMENT, TOWN OF PLAINVILLE; AND TOWN OF PLAINVILLE, c/o Attorney Jonathan D. Chomick, Mastrianni and Seguljic LLC, 128 East Street, Plainville, CT 06062



Jennifer M. Mayo
Acting Clerk of the Commission