Kenneth Krayeske,
Complainant(s)
against

James Rovella, Chief, Police Department, City of Hartford; Police Department, City of Hartford; and City of Hartford,
Respondent(s)

Notice of Meeting

Docket #FIC 2016-0052

November 7, 2016

<u>Transmittal of Proposed Final Decision</u>

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, December 7, 2016.** At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission ***ON OR BEFORE November 22, 2016.*** Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **<u>original and fourteen (14) copies</u>** must be filed ***ON OR BEFORE November 22, 2016.*** **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **<u>fifteen (15) copies</u>** be filed ***ON OR BEFORE November 22, 2016***, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis

W. Paradis
Acting Clerk of the Commission

Notice to: Kenneth Krayeske
Attorney Cynthia Lauture

FIC# 2016-0052/Trans/wrbp/TCB//TAH/2016-11-07

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by | Report of Hearing Officer

Kenneth Krayeske,

Complainant

against | Docket #FIC 2016-0052

James Rovella, Chief, Police Department,
City of Hartford; Police Department,
City of Hartford; and City of Hartford,

Respondents | November 4, 2016

The above-captioned matter was heard as a contested case on July 5, 2016, at which time the complainant 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. It is found that by letter dated December 17, 2015, the complainant made a request to the respondents for six categories of records which included the following:

> a. All videos from the dashboard cameras of all cars that responded in Case#15-36007 on November 19, 2015, including but not limited to car 341.

It is found that the requested records described in subparagraph 2a, above, are the only records at issue in this complaint.

3. By letter dated and filed on January 15, 2016, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his request. The complainant also requested the imposition of civil penalties.

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

> "Public 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:

> 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.

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 requested records, to the extent they exist, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that the complainant submitted his request on Thursday, December 17, 2015 to the email address PoliceChief@hartford.gov at 5:32 p.m. It is found that the offices of the respondent department close at 5:00 p.m. and therefore, the complainant's request was not received until the next day on Friday, December 18, 2015.

9. It is found that the complainant's December 17, 2015 request was dated and time stamped as received by the respondent department on Friday, December 18, 2015.

10. It is found that the respondent department's practice and policy is for all FOI requests to be processed by the respondent department's FOI Liaison, which requests include those that are received by the respondent department through the email address PoliceChief@hartford.gov.

11. It is found that the respondent department's FOI Liaison received the complainant's December 17, 2015 request on Monday, December 21, 2015 and she immediately issued a letter acknowledging receipt of the complainant's request.

12. It is found, however, that the requested video recordings were scheduled to be automatically erased on Saturday, December 19, 2015, pursuant to the respondents' thirty-day retention policy and that they no longer existed at the time the FOI Liaison processed the complainant's request and issued the acknowledgment letter.

13. At the hearing on this matter, the complainant raised two issues:

a. he did not receive a definitive response to the existence of video recordings from the dashboard camera of car 341; and

b. the respondents' failure to preserve the video recordings from the dashboard cameras of the other cars that responded in Case#15-36007 on November 19, 2015.

14. With respect to the issue described in paragraph 13a, above, it is found that no video recording from a dashboard camera of car 341 ever existed because car 341 does not have a dashboard camera and therefore, there are no records responsive to that portion of the complainant's request described in paragraph 13a, above.

15. With respect to the issue described in paragraph 13b, above, the complainant contended, at the hearing on this matter, that because he submitted his request within the thirty-day period prior to the video recordings' erasure, the respondents had an obligation to preserve them and that the respondents' failure to preserve the recordings warrants a civil penalty against them as well as an order for the staff of the respondent department to attend an FOI training workshop.

16. Notwithstanding the complainant's contention, it is found that, as a practical matter, it was not unreasonable that the respondents did not process the complainant's request in time to preserve the video recordings.

17. It is concluded that based on the facts and circumstances of this case, the respondents did not violate the FOI Act as alleged by the complainant.

18. Based on the findings and conclusions, above, there is no basis on which to impose civil penalties or order training in this matter.

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.

Tracie C. Brown

Attorney Tracie C. Brown
as Hearing Officer

FIC2016-0052/hor/tcb/2016/8/10