



# FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106  
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Jeremy Shafer and the  
American Civil Liberties Union,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0050

Chief, Police Department, City of Bridgeport;  
Police Department, City of Bridgeport; and  
City of Bridgeport,  
Respondent(s)

October 27, 2016

## Transmittal of Proposed Final Decision

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, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, November 16, 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 7, 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 **original and fourteen (14) copies** must be filed **ON OR BEFORE November 7, 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 **fifteen (15) copies** be filed **ON OR BEFORE November 7, 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  
Acting Clerk of the Commission

Notice to: Attorney Dan Barrett  
Attorney Gregory M. Conte

FIC# 2016-0050/Trans/wrbp/TCB/VB/2016-10-27

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Jeremy Shafer and the American Civil  
Liberties Union,

Complainant

against

Docket #FIC 2016-0050

Chief, Police Department, City of Bridgeport;  
Police Department, City of Bridgeport; and City  
of Bridgeport,

Respondents

October 24, 2016

The above-captioned matter was heard as a contested case on April 21, and July 11, 2016, at which times 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. It is found that by letter dated December 17, 2016, the complainants made a request to the respondents for the following:
  - a. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm. Your response should include—but not be limited to—all records showing the occasions on which each device was purchased, borrowed, or used; the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices;

b. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of mobile device forensics devices or software, such as are marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others. Your response should include-but not be limited to - all records showing the occasions on which each device or piece of software was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices or software;

c. all records reflecting the Bridgeport Police Department's assessment, purchase, borrowing, or use of any unmanned aerial vehicles, also known as drones. Your response should include-but not be limited to-all records showing the occasions on which a drone was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of the drone; and

d. all records showing applications made to, or amounts received from, any funding source or grant program for funds to be used for the purchase or use of:

- (1.) IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm;
- (2.) mobile device forensics devices or software, such as arc marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others; and
- (3.) drones.

3. It is found by letter dated December 22, 2015, that the respondents acknowledged the complainants' request but did not provide any responsive records.

4. By letter dated January 15, 2016 and filed on January 19, 2016, the complainants appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with their December 17, 2016 records request.

5. 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.

6. 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.

7. 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.”

8. 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.

9. At the hearing in this matter, the respondents refused to confirm or deny that they maintain records that are responsive to the complainants' request. The respondents claimed that to do so would disclose an investigatory technique and would encourage criminal behavior. Nevertheless, the respondents submitted responsive records to the Commission for in camera inspection.

10. Such records shall be identified as IC-2016-0050-1 through IC-2016-0050-3, totaling 91 pages.

11. The respondents claimed the records are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., which provides that disclosure is not required of “Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (E) investigatory techniques not otherwise known to the general public[.]”

12. It is found that the respondents testified only in general terms that disclosure would interfere with law enforcement and would allow criminals to adjust their behavior accordingly.

13. It is found, based on the complainant's exhibits, and upon careful review of IC-2015-581-1 through IC-2015-581-3, that disclosure of the records identified as IC-2015-581-1 through IC-2015-581-3 would not result in the disclosure of investigatory techniques not otherwise known to the general public. In particular, complainant's Exhibit E, which was entered into evidence during the hearing in this matter, is a news story published by a local TV station about law enforcement's widespread use of a software program to discover the contents of cell phones.

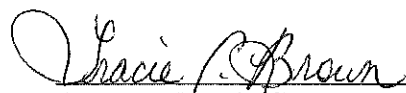
14. It is concluded, therefore, that §1-210(b)(3)(E), G.S., does not exempt IC-2015-581-1 through IC-2015-581-3 from disclosure.

15. It is concluded that the respondents violated the FOI Act as alleged.

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

1. Forthwith, the respondents shall promptly provide to the complainants, free of charge, an unredacted copy of all records responsive to their request. In addition, the respondents shall conduct a diligent search for any policies, rules, guidance, or procedures governing the use of any of the devices identified by the complainants, and promptly provide a copy of any such records to the complainants, free of charge. If the respondents do not maintain any such records, they shall inform the complainants of that fact in written correspondence.

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



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Attorney Tracie C. Brown  
as Hearing Officer