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Michael Bracken, Jr.
Complainant(s)
against

Eric Osanitsch, Chief, Police Department, Town of Windsor Locks; Police Department, Town of Windsor Locks; and Town of Windsor Locks
Respondent(s)

Notice of Meeting

Docket #FIC 2017-0083

October 25, 2017

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, lst floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, November 15, 2017.** 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 3, 2017.*** 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 3, 2017.*** **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 3, 2017*** 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

Wendy R.B. Paradis
Acting Clerk of the Commission

Notice to: Michael Bracken, Jr.
Attorney Carl T. Landolina

FIC# 2017-0083/ITRA/VRP//TAH/WRBP/2017-10-25

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

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

Michael Bracken,

Complainant

against | Docket #FIC 2017-0083

Eric Osanitsch, Chief, Police Department, Town of Windsor Locks; Police Department, Town of Windsor Locks; and Town of Windsor Locks,

Respondents | October 25, 2017

The above-captioned matter was heard as a contested case on May 2, 2017, 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. By letter of complaint filed February 7, 2017, 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 regarding a police response on January 17, 2017 to the Windsor Locks town hall due to the complainant's attendance at a meeting there.

3. Specifically, the complainant alleged:

   a. that his request for records was not fulfilled because the records were not first made available to him for inspection so that he could choose the ones he wanted copied;

   b. that he was not given a copy of the entire record of telephone and radio transmissions related to the incident;

   c. that he was not given a copy of records with regard to any mobile data terminal messages sent or received about the incident or about him;

   d. that he was given only the face page of the computer aided dispatch sheet;

e. that it was intimidating and hostile to require him to go to Windsor Locks Police Department to obtain his records;

f. that the use of police officers to release requested records is intended to intimidate and to solicit a response from the person requesting the records in order to provoke an arrest of the individual.

4. Finally, the complainant requested the following remedies:

a. That in the future requested records be made available through the town clerk's office;

b. That the Windsor Locks Police Department immediately release all requested records by making them available to the complainant at the town clerk's office, free of charge; and

c. That the Commission sanction the Windsor Locks Board of Selectmen "to the full extent of the law including a finding of wrongdoing, fines, penalties and any other avenue available to the Board of Selectmen.

5. It is found that the complainant made a January 18, 2017 request to the respondents for all records, including communications, pertaining to a police response to the complainant's presence at a January 17, 2017 meeting of the Windsor Locks Board of Selectmen at the town hall.[1] Specifically, the complainant requested:

> … all materials written, electronic and or any other form including the dispatcher's computer aided dispatch record, any police report generated by any Windsor Locks Police Department employee, any statement obtained by anyone, any text message sent to cell phones, any Mobile Data Terminal (M.D.T.) messages, any notes taken, all radio transmissions pertaining to this all and or any other means of communication where information was exchanged pertaining to this incident in which the Windsor Locks Police Department responded to the Windsor Locks Town Hall on Tuesday, January 17, 2017 somewhere between the hours of 18:30 to 19:10 with a show of force of three officers with an additional officer sitting across the street in Saint Mary's Church parking lot ….
>
> I was told by the sergeant that the officers just so happened to be in the area and that they were not there for any particular reason but after leaving the town hall I learned that the sergeant had lied to me and that they had responded to a call of someone being unruly. Being that your officers congregated around me and went nowhere else it is obvious that they were there for me. I know who the caller is and I want the documentation in order to take civil action against this person and those involved for using

[1] That meeting is the subject of Docket #FIC 2017-0082, Bracken v. Kervick et al.

> the police department to harass and intimidate me. I have contacted the A.C.L.U and they informed me to obtain this information.

6. It is found that the complainant has been a police officer, and has personal knowledge of the types of records generated by a police department.

7. It is found that the respondents provided an audio CD of three recordings to the complainant, only one of which was a communication among officers and the dispatcher, and provided just the first page of the 17-page computer aided dispatch record.

8. It is found that when the complainant requested the additional 16 pages of the computer aided dispatch record, he was told "you will get what we give you."

9. It is found that the complainant had reasonable grounds to believe that there were additional recorded communications among the officers and the dispatcher, because the recordings provided to him did not fully explain how the officers all happened to arrive at the Windsor Locks Town Hall at the time of the incident to confront him.

10. It is additionally found that a friend of the complainant with a police scanner was surprised to hear numerous police communications the night of the incident, and told the complainant about the communications soon after he heard them, wondering what the complainant had done to provoke the police response.

11. It is found that the friend's utterance was spontaneous and made under circumstances that would preclude contrivance and misrepresentation.

12. While the statement by the friend is hearsay, and was objected to by the respondents, the statement falls within the "excited utterance" exception:

> The excited utterance exception is well established. Hearsay statements, otherwise inadmissible, may be admitted into evidence to prove the truth of the matter asserted therein when (1) the declaration follows a startling occurrence, (2) the declaration refers to that occurrence, (3) the declarant observed the occurrence, and (4) the declaration is made under circumstances that negate the opportunity for deliberation and fabrication by the declarant.

State v. Kelly, 256 Conn. 23, 41-42 (2001). [Internal citation omitted.]

13. It is therefore found that communications were made among the responding police officers and the dispatcher beyond the single communication provided to the complainant. Those communications may have taken the form of recorded conversations, Mobile Data Terminal messages, or cell phone or text communications; but in any event, those additional communications must have occurred.

14. Additionally, it is found, based on the complainant's credible testimony, that any radio or telephone communications to or from the Windsor Locks police department would have been recorded.

15. Section 1-200(5), G.S., defines "public records or files" as:

> 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.

16. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

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

18. It is concluded that the 16 remaining pages of the computer aided dispatch communications and the additional communications among the responding police officers and the dispatcher are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

19. It is therefore concluded that the respondents violated the FOI Act by failing to provide the complainant all the records he requested.

20. Under the facts and circumstances of this case, it is concluded that the respondents did not violate the FOI Act by presenting the complainant with copies instead of an opportunity to first inspect the records. The complainant only sought to avoid being charged for either blank pages, or records that he did not want, and neither of those two things happened.

21. Finally, it is concluded that the claims described in paragraphs 3.e and 3.f, above, do not allege violations of the FOI Act.

22. With respect to the request for fines and penalties, §1-206(b)(2), G.S., provides in relevant part:

> … upon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and after the custodian or other official directly responsible for the denial has been given an opportunity to be heard at a hearing conducted in accordance with

> sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.

23. It is found that the complainant was unreasonably obstructed in his attempt to obtain records by officers of the Windsor Locks Police Department. It is apparent that there is ill will between the complainant and officers of the Windsor Locks Police Department that has risen to litigation between the parties. The Commission observes that it is the duty of public officials, particularly police officers, to take the higher road in confrontations with citizens. It is also found, however, that there is no evidence that the obstruction was directed by the named respondent, Chief Eric Osanitsch. It is also found that it would not be a good use of the Commission's resources to conduct additional hearings to determine who exactly was the custodian or other official responsible for the denial of the complainant's request. The Commission in its discretion therefore declines to impose a civil penalty.

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

1. The respondents shall forthwith provide to the complainant, free of charge, copies of the 16 remaining pages of the computer aided dispatch communications, and copies of all additional recorded communications between the responding police officers and among the officers and the police dispatcher.

2. The respondents shall deliver the records by mail or email, or by leaving them with the town clerk, and shall not require the complainant to personally pick up the records at the police station.

Victor R. Perpetua
as Hearing Officer

FIC2017-00083/HOR/VRP/10242017