

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Jeff Schneider,

Complainant

against

Docket #FIC 2020-0139

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

Respondents

June 9, 2021

The above-captioned matter was heard as a contested case on January 21, 2021, at which time 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, the hearing was 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. It is found that, on March 10, 2020, the complainant arrived at the Cromwell Police Department and requested that the respondents provide him with copies of audio and video records pertaining to an incident that occurred on March 20, 2018 (hereinafter referred to as the "incident").
3. It is found that, on March 10, 2020, the respondent department's records clerk telephoned the complainant and informed him that the records could not be released to him because a nolle prosequi had entered in the criminal matter and more than thirteen months had elapsed from such entry and, therefore, the records were erased.
4. It is found that, on March 16, 2020, the complainant telephoned the respondent police department and again requested copies of the records described in paragraph 2, above.

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

5. It is further found that, by email dated March 17, 2020, the complainant requested that the respondents provide him with copies of “audio and video records showing the subject, any portion of the alleged offense and/or the investigation of the alleged offense.” It is found that the complainant specified that this request should be understood to include “any video, audio or visual and audio recording captured by a body worn camera, a dashboard camera or any other video or audio recording device operated by or on behalf of the law enforcement agency or law enforcement personnel” with regard to the incident. It is further found that, in a subsequent email dated March 17, 2020, the complainant also requested copies of his “audio conversations” with the respondents’ records clerk.

6. By email dated and filed March 19, 2020², the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide him with copies of the requested records described in paragraphs 2, 4, and 5, above.

7. 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.

8. 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 (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.

9. 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

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §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 over this matter.

any public record.”

10. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a), 1-212(a), G.S., and, to the extent such records exist, must be disclosed unless they are exempt from disclosure.

11. It is found that, subsequent to the March 17, 2020 request described in paragraph 5, above, the respondents provided the complainant with all of the records pertaining to the incident, including the original case/incident report, as well as six supplemental case/incident reports. It is further found that the respondents provided the complainant with copies of their purchase orders for body cameras, and related charging/docketing stations and battery kits; a copy of their retention schedule for dispatch records and mobile data transmissions; a copy of their standard operating procedure 14-01 concerning the use of their “digital video manager (DVM-500) in car video system”; and a copy of their standard operating procedure 18-02 concerning “body worn cameras.”

12. It is found that the respondents did not provide the complainant with any audio or video records concerning the incident. The complainant contended that he should have received these records.

13. Chief of Police Denise Lamontagne appeared telephonically at the contested case hearing and testified on behalf of the respondents.

14. It is found that, while the respondents originally indicated that the requested audio and video records were exempt from disclosure pursuant to Conn. Gen. Stat. §54-142a (Connecticut’s erasure statute), in fact, the requested records did not exist at the time the complainant made his initial request for records in this case.

15. In this regard, it is found that, at the time of the incident, the respondents were not using body cameras.

16. It is further found that, while the respondents did have dash camera video technology at the time of the incident, such technology was not utilized during the incident. In addition, it is found that, even if the dash camera video had been utilized during the incident, the respondents would have only been required to retain such record for a period of sixty days.

17. It is further found that, while the respondents may have had a booking video related to the incident, by the time of the complainant’s first request for records, the respondents were not able to provide the complainant with this video, as the respondents’ booking videos are overwritten every thirty days.

18. Finally, regarding the complainant’s request for “audio copies” of conversations that he had with the respondents’ records clerk, such records never existed, as the respondents do not record such calls.

19. 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 hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 9, 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:

JEFF SCHNEIDER, 460 Smith Street, Unit J, Middletown, CT 06457

CHIEF, POLICE DEPARTMENT, TOWN OF CROMWELL; POLICE DEPARTMENT, TOWN OF CROMWELL; c/o Records Division, 5 West Street, Cromwell, CT 06416; **AND TOWN OF CROMWELL**, 41 West Street, Cromwell, CT. 06416



Cynthia A. Cannata
Acting Clerk of the Commission