

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant,

Docket # FIC 2020-0069

against

Chief, Police Department,
Town of West Hartford;
Police Department, Town of
West Hartford; and
Town of West Hartford,

Respondents

September 22, 2021

This matter was heard as a contested case on October 27, 2020, at which time the complainant and the respondents appeared 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. By letter dated February 4, 2020,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide him records responsive to his January 15, 2020 request, described in paragraph 3, below.
3. It is found that, by letter dated January 15, 2020, the complainant made a multi-part request to the respondents for records relating to Kelvin Robinson and a November 7, 2019

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

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 subject matter jurisdiction.

incident that initiated in West Hartford, CT, and crossed over into Hartford, CT, CFS No. 1900039990 ("November 7th incident"). It is found that he requested a copy of:

all records, reports (not including investigative and accident reports), audio, video, digital recordings, body-cam videos, photographs (including but not limited to black and white and color), documentation, tapes, transmissions transcriptions, transmissions of metadata, broadcasts, notes, statements, recordings, telephone recordings, telephone logs, for the defendant and all co-defendants in this matter, including but not limited to all:

incident reports and any attachments,
name of PC Affidavit signer, Badge No. 332,
body-cam video of or in the barracks, booking room and processing room,
digital recordings of or in the barracks, booking room and processing room,
transmission of metadata of or in the barracks, booking room and processing room,
telephone recordings of or in the barracks, booking room and processing room,
telephone logs of or in the barracks, booking room and processing room,
MVR with audio,
mobile video,
audio recordings,
digital recordings,
dashboard audio,
digital video,
body-cam video,
video recordings,
CD's,
video, digital, and audio recordings including all officer contacts with the dispatch,
statements of defendant, Kelvin Robinson,
statements of all co-defendants,
property seized,
dispatcher recordings,
dispatcher tapes,
handwritten notes,
typewritten notes,
any other notes, and
rough notes transcribed by any officer,
all records relating to any device used in transmitting and/or receiving, [and]

all records relating to any cell phone examination.
("January 15th request")

4. It is found that, by email dated January 24, 2020, the respondents acknowledged the January 15th request.

5. It is found that at some time prior to January 31, 2020, the complainant obtained a copy of the requested "PC Affidavit".³

6. It is found that, by email dated January 31, 2020, the Assistant Supervisor of the respondents' Records Division ("Assistant Supervisor"), informed the complainant that records responsive to his January 15th request (i.e., case incident report, disc containing radio communications, and disc containing booking video) were ready to be picked up or mailed. She also informed the complainant that "[t]he dash cam video [relating to the November 7th incident] is unavailable due to it being purged per retention/disposition schedule #M7-640, Connecticut State Library, Office of the Public Records Administrator." It is found that copies of the case incident report, booking video and radio communications were subsequently picked up by the complainant.

7. It is found that by email dated February 4, 2020, the complainant followed-up with the respondents regarding his request for dash camera videos and informed the respondents that he had spoken with the Office of Public Records Administrator who confirmed that the #M7-640 retention schedule did not apply to the requested dash camera video because the November 7th incident involved a felony arrest, and the minimum retention time is 10 years for such records. By the same email, the complainant again requested that the respondents provide a copy of dash camera video.

8. It is found that by email dated February 7, 2020, the Assistant Supervisor informed the complainant that "after a further search, the WHPD [West Hartford Police Department] needs to amend its initial reply.... The more accurate answer is that the vehicle utilized by the WHPD [during the November 7th incident] did not have a dash camera. As a result, the video was never purged. WHPD never had a dash camera video for this police contact. Sorry for the inaccurate initial response."

9. It is found that by email dated February 11, 2020, the complainant followed-up with the Assistant Supervisor and requested the names of all of the police officers who were at the scene of the November 7th incident and reiterated his request for all dash camera videos related to such incident.

10. It is found that by email dated February 18, 2020, the Assistant Supervisor provided the complainant with a printout listing the responding units at the November 7th incident, and informed the complainant that "there is no dash cam for any of the responding units." It is

³ The Commission notes that by email dated January 29, 2020, the respondents informed the complainant that the requested PC Affidavit was signed by Detective B. Dudzinski with badge #337, and not badge #332 as described in the January 15th request.

found that the complainant subsequently inquired as to why there were no dash camera videos for any of the units, and was told that “[t]he dash cams are activated when a car responds to a scene with lights and sirens. That was not the case for this incident, therefore there are no dash cam videos for this case.”

11. It is found that after receiving a copy of the docketing letters and complaint in this matter, which were sent by the Commission on April 20, 2020, the respondents conducted an additional search for responsive records. It is found that on May 28, 2020, the complainant received copies of two affidavits regarding the requested dash camera video.⁴ One affidavit was from Sandra Moutinho, the respondents’ Records Supervisor, who reviewed all the incident reports related to the November 7th incident. She attested that six vehicles arrived at the scene of the November 7th incident, and that only one vehicle was equipped with a dash camera at that time. The second affidavit was from Sergeant Anthony Miele III who attested that he “personally searched the database that contains all in-car footage” and that “there is no video of [the November 7th] incident in the possession of the WHPD because the video either never existed or has been automatically purged from the system due to passing the pre-set time constraints for retention.”

12. It is found that on October 26, 2020, the day before the hearing, the respondents provided the complainant with an additional record (i.e., an inventory of property seized without a search warrant).

13. Section 1-200(5), G.S., defines “public records or files” as:

[a]ny 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

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

⁴ The affidavits have been marked as complainant’s Exhibits I and J, respectively.

⁵ The Commission notes that section 1-200(5), G.S., was subsequently amended to include the term “videotaped”. See June Sp. Sess. Public Act 21-2, §147.

15. 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.”

16. It is found that the records requested by the complainant are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S.

17. At the hearing, the complainant acknowledged that he had been provided with some records responsive to his request, but contended that the respondents failed to conduct an adequate and thorough search and failed to provide him with all responsive records (including dash camera video, a recording of an “interjurisdictional pursuit notice,”⁶ and officer field notes) in a prompt manner.

18. With respect to the requested field notes and dash camera video, respectively, the respondents testified that their search for such records included a search of their NextGen computer system (report writing software), Watch Guard system (database containing all in-car footage which automatically uploads to the respondents’ server), and inquiries of those police officers identified on the printout described in paragraph 10, above, as responding units⁷.

19. With respect to the requested field notes, it is found that the respondents searched for and did not locate any field notes responsive to the January 15th request.

20. With respect to the requested dash camera video, it is found, and the respondents acknowledged, that their initial response was “an error.” It is also found that the respondents’ subsequent responses regarding dash camera video were at times confusing. Nevertheless, based on credible testimony provided at the hearing, it is found that the respondents searched for and did not locate any dash camera video responsive to the January 15th request.

21. With respect to a recording of an “interjurisdictional pursuit notice”, the complainant testified that he “understood” from the Hartford Police Department that a “phone call” was made by the respondents to the Hartford Police Department within the window of time in which the November 7th incident occurred. It is found that the complainant did not produce any evidence of such phone call at the hearing. The respondents testified, and it is found, that the incident did not involve a “pursuit”, and that recordings of all radio transmissions were searched and provided to the complainant.

⁶ Subsection VIII(A) of section 13.1 of Chapter 13 of the West Hartford Police Department’s Professional Reference Directory relating to interjurisdictional pursuits requires that the respondents “provide timely notification of a pursuit in progress to any other jurisdiction into which the pursuit enters...” Subsection II of section 13.1 of the Directory defines a “pursuit” as “an attempt by a police officer in an authorized emergency vehicle to apprehend any occupant of another moving motor vehicle, when the driver of the fleeing vehicle is attempting to avoid apprehension by maintaining or increasing the speed of such vehicle or by ignoring the police officer’s attempt to stop such vehicle.”

⁷ It is found that although seven officers are listed on the printout as responding to the scene, only six officers arrived at the scene. The respondents nevertheless made inquiries of all seven officers.

22. It is found that the complainant's testimony described in paragraph 21, above, without the production of evidence of the "phone call", is insufficient evidence to support his claim that a recording of an "interjurisdictional pursuit notice" exists.

23. It is found that the respondents conducted a thorough search for the requested records and that all responsive records maintained by the respondents were provided to the complainant.

24. With respect to the complainant's claim that the respondents' response was not prompt, the Commission has previously opined that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

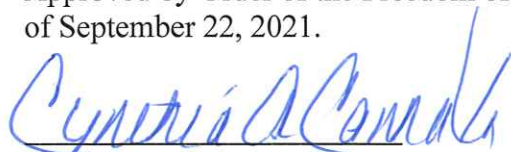
25. It is found that the provision of the case incident report, booking video and radio communications was prompt. However, the respondents offered no testimony as to why the inventory form, described in paragraph 12, above, was only provided to the complainant the day before the hearing in this matter. It is found that the provision of the inventory form on October 26, 2020, was not prompt.

26. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., with respect to the inventory form.

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

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

Approved by Order of the Freedom of Information Commission at its regular meeting of September 22, 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:

ROBERT CUSHMAN, Law Offices of Robert A. Cushman, LLC, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

CHIEF, POLICE DEPARTMENT, TOWN OF WEST HARTFORD; POLICE DEPARTMENT, TOWN OF WEST HARTFORD; AND TOWN OF WEST HARTFORD, c/o Attorney Matthew D. Ritter, Shipman & Goodwin, LLP, One Constitution Plaza, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission