

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2021-0167

Stephen Clark, Chief,
Police Department, Town of
Newington; Police Department,
Town of Newington; and Town
of Newington,

Respondents

February 23, 2022

The above-captioned matter was heard as a contested case on October 22, 2021, at which time both 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

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 March 16, 2021, the complainant made a multi-part request to the respondents for copies of records pertaining to the arrest of Richard Satkowski on March 13, 2021 (Case No. 21-4357), including audio and video recordings "of or in the barracks, booking room and processing room" and "the print out for each and every test and external standard performed on the Draeger Alcotest 9510¹ Serial No. ARBD-0054 from February 1, 2021 through and including March 16, 2021" ("March 16th request").
3. It is found that sometime between March 16, 2021, and March 25, 2021, the complainant filed with the respondents a motion to preserve evidence in Case No. 21-4357, described in paragraph 2, above. It is found that by email dated March 25, 2021, the respondents

¹ The Draeger Alcotest 9510 is "an advanced breath alcohol measuring instrument for evidential applications." https://www.draeger.com/en-us_us/Products/Alcotest-9510

acknowledged such motion. It is found that the respondents also informed the complainant that they had “prepared five audio/video disks at \$50.00/ea., along with any/all related police reports”, and requested prepayment of \$250.00.

4. By letter of complaint received on March 29, 2021,² 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 March 16th request, described in paragraph 2, above. The complainant also requested the imposition of civil penalties.

5. At the time of the request, §1-200(5), G.S., provided:

‘[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.³

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

9. It is found that on or about April 5, 2021, in a separate matter before the

² On March 25, 2020, the Governor issued Executive Order 7M, thereby suspending the provisions of Conn. Gen. Stat. §1-206(b)(1), which required the Freedom of Information Commission to hear and decide an appeal within one year after the filing of such appeal. Executive Order 7M, which was extended by Executive Order 12B, applied to any appeal pending with the Commission on the issuance date and to any appeal filed prior to July 1, 2021. Consequently, the Commission retains subject matter jurisdiction.

³ Section 147 of Public Act 21-2 (June Sp. Sess.) amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped”.

Department of Motor Vehicles (“DMV”) Administrative Per Se Unit (*State of Connecticut v. Richard Satkowski*, Case No. 21000873), the complainant served on the respondents a subpoena duces tecum for records similar to those records sought in the March 16th request.

10. It is found by email dated April 21, 2021, a DMV Per Se Attorney, after corresponding with the respondents, informed the complainant that “the records are available to be picked up” from the respondents. It is found that the complainant attempted to pick up, but was not provided, such records because he refused to pay a \$250.00 charge.

11. It is found that, sometime between April 21, 2021, and April 27, 2021, the respondents provided the complainant with copies of records which were responsive to the subpoena duces tecum and the March 16th request, free of charge.

12. At the hearing, the complainant contended that the respondents failed to respond to his March 16th request, and that the records, described in paragraph 11, above, were provided in response to the subpoena duces tecum, and not in response to such request. In addition, the complainant contended that even if such records were provided in response to his March 16th request, the respondents nevertheless failed to provide the requested audio and video recordings for a certain timeframe, and Draeger test strips (i.e., Test Nos. 466, 470 and 471).

13. With respect to whether the respondents responded to the March 16th request, the respondents testified that the records, described in paragraph 11, above, were responsive to the subpoena duces tecum and the March 16th request, because such subpoena and records request sought the same records and were “happening simultaneously.” It is found that, under the facts and circumstances of this case, the respondents did respond to the March 16th request.

14. With respect to the request for audio recordings, the respondents testified, and it is found, that they have a closed caption camera surveillance system with video, only. It is found that the respondents do not maintain such audio recordings.

15. With respect to the video recordings at issue, the respondents testified that such recordings did not download from the server at the time the evidence was preserved, and that due to the passage of the respondents’ 30-day retention policy, such recordings could not be retrieved.⁴ It is found that, at the time of the March 16th request, the respondents did not maintain copies of the video recordings.

16. It is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with respect to the requests for audio and video recordings.

17. With respect to the Draeger test strips at issue, the respondents testified that they searched the logbooks and tried to pull the actual requested test strips from the Draeger machine, but were unable to locate such test strips. During cross-examination, the respondents also testified, however, that there were certain files that they had not thought to search, which might have contained copies of such test strips.

⁴ It is found that it is unclear from the record why such recordings did not download.

18. It is found that the respondents failed to conduct a thorough and diligent search for the test strips at issue. It is further found that the respondents failed to prove that they provided the complainant with copies of such test strips. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

19. Notwithstanding the conclusion reached in paragraph 18, above, the Commission in its discretion declines to impose a civil penalty in this matter.

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 undertake an additional search for the test strips, described in paragraph 12, above. If the respondents locate such test strips, they shall provide copies of such records to the complainant, free of charge. If the respondents do not locate such test strips, they shall provide the complainant with an affidavit detailing the results of their search including the individual(s) who conducted the search.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of February 23, 2022.



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 Office of Robert A. Cushman, LLC, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

**STEPHEN CLARK, CHIEF, POLICE DEPARTMENT, TOWN OF NEWINGTON;
POLICE DEPARTMENT, TOWN OF NEWINGTON; AND TOWN OF
NEWINGTON**, c/o Attorney Benjamin Ancona, Jr., Law Office of Benjamin Ancona, Jr., 39 East Cedar Street, Suite 8, Newington, CT 06111



Cynthia A. Cannata
Acting Clerk of the Commission