

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Anthony Collymore,

Complainant

against

Docket # FIC 2020-0549

Fernando Spagnolo, Chief, Police
Department, City of Waterbury; Police
Department, City of Waterbury; and City of
Waterbury,

Respondents

June 22, 2022

The above-captioned matter was heard as a contested case on April 11, 2022, 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 through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session). The complainant is incarcerated at a facility of the Connecticut Department of Correction.

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 October 15, 2020, the complainant requested that the respondents provide him with:
 - (a) Copies, transcripts, and/or records of, any and all, 911 call/s to the W[aterbury] P[olice] D[epartment] concerning case #2010-003736;
 - (b) The time, date, location or . . . origin, identity of the 911 call/s and caller/s in case #2010-003736;
 - (c) Any other documented reports, records, and/or notes pertaining to the 911 calls in case #2010-003736.
3. It is found that, by letter dated October 21, 2020, the respondents acknowledged the complainant's request.

4. By letter of complaint filed October 28, 2020,¹ the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to respond to his request, as described in paragraph 2, above.

5. It is found that, by letter dated December 23, 2020, the respondents informed the complainant that they located thirty-two pages of records responsive to his request and that the cost for such records was \$16.00.

6. It is found that, on or about March 23, 2021, the complainant paid for the records. On April 28, 2021, the respondents sent the records to the complainant, along with a letter indicating that all responsive records that they maintain had been provided.

7. 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.²

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 . . . (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 any public record.”

10. It is found that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

¹On 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.

²Section 147 of Public Act 21-2 (June Special Session) subsequently amended the definition of “[p]ublic records or files” to also include data or information that is “videotaped.” That amendment was effective on June 23, 2021.

11. It is found that, as of the date of the hearing in this matter, the only record still at issue was the recording of the 911 call, described in paragraph 2(a), above, which the complainant argued was improperly withheld from him. That call was made on January 19, 2010.³

12. The respondents argued that they conducted a thorough search for all responsive records, including the recording of the 911 call, and that, although such a recording likely exists, it is inaccessible despite the respondents' reasonable efforts to retrieve it.

13. It is found, that, upon receiving the complainant's request, as described in paragraph 2, above, the sergeant in charge of the respondent police department's records division ("sergeant") contacted each division of the police department that might have maintained the records, including the property and evidence division and the communications division, and assisted both divisions with their records searches. With respect to the property and evidence division, it is found that their search uncovered thirty-two pages of records, as described in paragraph 4, above, but that the recording of the 911 call was not located.

14. Because the respondents could not locate the recording, it is found that the sergeant then contacted the supervisor in charge of the communications division in 2010, and learned that, from November 2004 through 2014, recordings of 911 calls were stored on a voice recorder but, due to the outdated nature of the recorder, the respondents were unable to access the recordings.⁴ It is found that, when they became aware of this issue, prior to the complainant's request, the respondents hired two information technology companies that specialized in data retrieval to attempt to extract the 911 calls from the voice recorder, but both companies were unable to do so.⁵

15. In light of the foregoing, it is found that the respondents undertook reasonable, albeit unsuccessful, efforts to attempt to retrieve the requested record.

16. It is concluded, therefore, that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with regard to the recording of the 911 call.

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

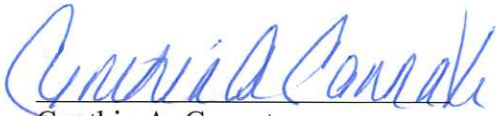
1. The complaint is dismissed.

³Although the complainant initially suggested that there may have been additional 911 calls, the computer-aided dispatch ("CAD") report included only one call.

⁴The respondents no longer use this recording system for 911 calls.

⁵Despite this information, the sergeant subsequently attempted to access the recording of the 911 call in response to a separate request in May 2021 from the complainant's attorney at the time, but he was also unable to do so.

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

ANTHONY COLLYMORE, #336848, MacDougall-Walker CI, 1153 East Street South, Suffield, CT 06080

FERNANDO SPAGNOLO, CHIEF, POLICE DEPARTMENT, CITY OF WATERBURY; POLICE DEPARTMENT, CITY OF WATERBURY; AND CITY OF WATERBURY, c/o Attorney Richard J. Scappini, City of Waterbury, Office of Corporation Counsel, 235 Grand Street, 3rd Floor, Waterbury, CT 06702



Cynthia A. Cannata
Acting Clerk of the Commission