

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Megan Duley,

Complainant

against

Docket # FIC 2021-0071

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

June 22, 2022

The above-captioned matter was heard as a contested case on March 14, 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).

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 email dated November 25, 2020, the complainant requested that the respondents provide to her:

a copy of all original and supplemental Connecticut State Police reports filed under case number CFS #:2000432710 that includes the original infraction summons that was issued to the accused, body camera recordings from all troopers at the scene, the warrant applications, all witness statements – both written and recorded taken during the investigation, copies of all radio transmissions, 911 telephone recordings stemming from the incident, internal affairs investigative reports, and all CAD remarks.

3. It is also found that case number CFS #:2000432710 pertained to an incident that occurred on October 6, 2020 involving the complainant and another individual (“October 6th incident”).

4. It is found that, having received no response to her request, the complainant, by email dated December 14, 2020, inquired about the status thereof. It is found that, within an hour, the Legal Affairs Division of the respondent department (“Legal Affairs”) replied via email, indicating that it had not received her original request. Legal Affairs further explained that it would send her the audio recordings as soon as it received them and that the Reports and Records Unit of the department would handle her request for a copy of the incident report.

5. It is found that, between mid-December 2020 and early January 2021, Legal Affairs conducted a search for the requested records, described in paragraph 2, above. It is found that, on January 8, 2021, the respondents provided to the complainant some of the requested records, including copies of the radio transmissions and 911 calls, the CAD remarks, and some of the body worn camera (“BWC”) footage.¹ Three days later, on January 11, 2021, the complainant emailed Legal Affairs, acknowledging receipt of those records, but noting that the BWC footage from one of the troopers on scene, Richard Buchetto (“Trooper Buchetto”), was not included and inquired as to its whereabouts. On January 24, 2021, the complainant again emailed the respondents, requesting Trooper Buchetto’s BWC footage as well as the photographs that he took at the scene of the October 6th incident.

6. It is found that, after receiving the complainant’s January 24th email, Legal Affairs contacted Trooper Buchetto and asked him to search for BWC footage from the October 6th incident. It is found that Trooper Buchetto conducted such search, but did not locate such footage.

7. By letter of complaint dated February 11, 2021,² the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying her request described in paragraph 2, above. Specifically, she claimed that the respondents failed to promptly provide her with the “police report, the original infraction summons, warrant application(s), witness statements from Dyanne Michalowski and Kim White, the internal investigation regarding Trooper Buchetto, and the body camera footage taken by Trooper Buchetto on October 6, 2020.”

8. 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,

¹At some point, the respondents also provided the complainant with a thirty-second clip of dashboard camera footage.

²On 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.

printed, photostated, photographed or recorded by any other method.³

9. 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.

10. 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.”

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

12. At the hearing in this matter, the complainant testified that the only records still at issue were Trooper Buchetto’s BWC footage and his dashboard camera footage, which the complainant insisted had been improperly withheld from her.⁴ The complainant further asserted that, although she received the other requested records, the respondents failed to promptly provide them to her.

13. The respondents argued that they conducted a thorough search for all responsive records, including Trooper Buchetto’s BWC footage, and that no such footage was located. Additionally, the respondents argued that all responsive records that they maintained were promptly provided to the complainant.

14. With regard to the BWC footage, Trooper Buchetto testified, and it is found, that two days prior to the October 6th incident, his assigned BWC appeared to be malfunctioning.⁵ Therefore, Trooper Buchetto obtained a spare BWC, which he was wearing on October 6, 2020. It is found that Trooper Buchetto’s BWC was activated during his initial contact with the complainant on October 6, 2020.

15. It is found that, upon his return to the police station, Trooper Buchetto placed the BWC on his cruiser’s docking station in order to offload the BWC’s contents. At the time, Trooper Buchetto believed that such offload had occurred.

³Section 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.

⁴Because the complainant did not allege in her complaint that the respondents violated the FOI Act by failing to provide her with a copy of additional dashboard camera footage, the Commission lacks jurisdiction to adjudicate such allegation, made for the first time at the hearing. However, the Commission notes that Trooper Buchetto testified during the hearing that no such additional footage exists.

⁵It was later determined that the docking station in Trooper Buchetto’s cruiser was malfunctioning, not his BWC.

16. Because Trooper Buchetto could not locate the BWC footage, he contacted Scott Stegeman, an information technology analyst for the respondents. Stegeman testified, and it is found, that he conducted a “broad” search through the system for Trooper Buchetto’s BWC footage from October 6, 2020. Specifically, Stegeman testified that he searched for the footage from “any and all users,” and that, while he utilized the specific date of October 6, 2020, he expanded the timeframe by two hours both before and after the time of the incident. It is found that no footage responsive to the request was located.

17. Stegeman further testified, and it is found, that the BWC footage likely was not on the system for one of three reasons. First, it was possible that the spare BWC never synced with Trooper Buchetto’s malfunctioning docking station, and thus was associated with the previous trooper who used the spare BWC. Under those circumstances, the footage would have been destroyed pursuant to the department’s ninety-day retention policy because it would not have been preserved for evidentiary purposes. Second, it was possible that the BWC footage properly synced with Trooper Buchetto’s docking station, but that the footage was destroyed pursuant to the ninety-day retention policy because Trooper Buchetto did not classify the footage as evidence. Third, it was possible that the BWC could have “shorted out” when Trooper Buchetto placed it on the malfunctioning docking station, thereby destroying the footage.

18. Based upon the foregoing, it is found that the respondents conducted a thorough and diligent search for Trooper Buchetto’s BWC footage from October 6, 2020.

19. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., with regard to the request for BWC footage.

20. With respect to the complainant’s claim that the respondents failed to provide the records to her promptly, 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 account all of the factors presented by a particular request.” The advisory opinion goes on to describe some of the factors that should be considered, including: 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.

21. It is found that the complainant did not indicate a specific time within which she needed the requested records. Although the respondents did not offer evidence related to the “promptness” factors, it is found, based on the totality of the circumstances, that they provided the records to the complainant promptly. As set forth more fully above, the complainant requested eight different types of records from the respondents. Three weeks later, having not received a response, the complainant again contacted the respondents, who, in less than an hour, responded that they had not received her original request. Less than a month later, the

respondents provided to the complainant copies of many of the requested records and remained in contact with her as they continued to search for additional responsive records.

22. Accordingly, it is concluded that the respondents did not violate the promptness provisions in §§1-210(a) and 1-212(a), G.S.

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 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:

MEGAN DULEY, c/o Attorney C. Christian Young, Cohen & Wolf, PC, 1115 Broad Street, Bridgeport, CT 6604

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Kate Ayers, State of Connecticut, Department of Emergency Services and Public Protection, Legal Affairs Unit, 1111 Country Club Road, Middletown, CT 06457



Cynthia A. Cannata
Acting Clerk of the Commission