

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket # FIC 2022-0035

Jason Thody, Chief, Police Department, City
of Hartford; Police Department, City of
Hartford; and City of Hartford,

Respondents

September 14, 2022

The above-captioned matter was heard as a contested case on July 18, 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), as amended by §1 of Public Act 22-3.

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 January 13, 2022, the complainant made a request to the respondents for records relating to an October 21, 2020 incident that resulted in the arrest of Orlando Trevitazzo in Case Number 20-32336. It is found that the complainant requested copies 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, broadcasts, notes, statements, and recordings, for the defendant and all co-defendants in this matter, including but not limited to all:

incident reports and any attachments,
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,
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,
Orlando Trevitazzo,
statements of all co-defendants,
property seized,
dispatcher recordings,
dispatcher tapes,
handwritten notes,
typewritten notes,
field notes transcribed by any officer,
any other notes,
all records relating to any device used in transmitting
and/or receiving,
all records relating to any cell phone examination,
all evidence logs, [and]
all inventory logs. ("January 13th request").

3. It is found that, by emails dated January 13, 2022 and January 18, 2022, the respondents acknowledged receipt of the January 13th request.

4. It is found that, by email dated January 20, 2022, the respondents informed the complainant that, in accordance with the provisions of §1-215(d), G.S., they had notified the state's attorney of the complainant's January 13th request and that such request was denied pursuant to §1-215(d), G.S.

5. By letter of complaint dated January 20, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide him with a copy of the requested records, described in paragraph 2, above. The complainant also requested that the Commission issue a civil penalty.

6. 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, videotaped, printed, photostated, photographed or recorded by any other method.

7. 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.

8. 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.”

9. 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.

10. It is found that, on May 23, 2022, the respondents provided to the complainant 19 pages of responsive records, constituting the “record of the arrest” for Trevitazzo.

11. Section 1-215, G.S., provides, in relevant part, as follows:

(a) For the purposes of this section, “record of the arrest” means

(1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and

(2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. “Record of the arrest” does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall

redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was arrested.

(c) In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record. . . .

12. Section 1-215, G.S., exclusively governs law enforcement agencies' disclosure obligations under the FOI Act while a criminal prosecution is pending. In Commissioner of Public Safety v. Freedom of Information Commission, et al., 312 Conn. 513 (2014) ("Public Safety"), the Supreme Court interpreted §1-215, G.S., and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose no more than basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person. In response to Public Safety, the General Assembly enacted Public Act 15-164, *An Act Concerning the Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act*, which amended §1-215, G.S., by increasing law enforcement agencies' disclosure obligations under §1-215, G.S.

13. It is found that all of the records identified in paragraph 2, above, relate to the arrest of Trevitazzo, and that, at all relevant times, the criminal prosecution related to such arrest was pending.

14. Accordingly, the respondents were required to disclose to the complainant the “record of the arrest,” within the meaning of §1-215(a), G.S. The respondents were also required to disclose to the complainant any other public record that documented or depicted the arrest or custody of Trevitazzo, within the meaning of §1-215(c), G.S., unless such public record was exempt from disclosure.

15. At the hearing in this matter, the complainant argued that the respondents failed to provide him with copies of any video recordings that depicted Trevitazzo’s arrest and custody. The complainant further contended that, although the respondents had provided him with a copy of the record of the arrest, they failed to do so promptly.

16. The respondents contended that they had satisfied their disclosure obligations set forth in §1-215, G.S. Specifically, the respondents argued that the only video recording responsive to the complainant’s request was body camera footage and that such footage was exempt from disclosure under §1-215(b)(3), G.S., because it contained information the disclosure of which could prejudice a pending prosecution. Additionally, the respondents argued that the record of the arrest was promptly provided to the complainant.

17. With regard to the body camera footage, Sergeant Omayra Martinez-Baidy, the civil litigation and FOI unit supervisor for the respondent police department (“sergeant”), testified that, after receiving the January 13th request, she emailed the supervisory assistant state’s attorney (“attorney”) at the Hartford State’s Attorney’s Office and informed him about such request. The attorney responded that his office intended to intervene in the matter and that he had “made [the complainant] aware of the need to comply with the discovery practices to receive the information he [wa]s seeking.” The sergeant testified that she interpreted the attorney’s response as an assertion that the requested records were exempt from disclosure because such disclosure could prejudice a pending prosecution.

18. It is found that the Hartford State’s Attorney’s Office did not intervene in this matter, pursuant to §§1-215(c) and (d), G.S. Moreover, it is found that the respondents presented no evidence to establish that disclosure of the body camera footage would be prejudicial to a prospective law enforcement action, pursuant to §1-210(b)(3)(D), G.S.,¹ and therefore failed to prove the applicability of such exemption.

19. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by denying the complainant’s request for video recordings that depicted Trevitazzo’s arrest and custody, described in paragraph 16, above.

20. With regard to the complainant’s claim that the respondents failed to provide the record of the arrest to him 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

¹In arguing that the footage was exempt from disclosure, the respondents erroneously cited to §1-215(b)(3), G.S.

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 he needed the requested records. It is also found that, at the time of the January 13th request, the respondents had a backlog of approximately 100 other records requests. It is further found that the respondents employed three individuals: the sergeant, another full-time employee, and a part-time employee, to respond to the high volume of requests that the respondents received, but that the sergeant was on leave from her employment with the respondents from February 2022 until May 2022.

22. Taking into consideration all of the factors presented by the January 13th request, it is concluded that the respondents did not violate the promptness provisions in §§1-210(a) and 1-212(a), G.S.

23. Notwithstanding the conclusion reached in paragraph 19, 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. Within one week of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainant a copy of the body camera footage depicting only Trevitazzo’s arrest and custody related to Case Number 20-32336.
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 September 14, 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 Offices of Robert A. Cushman, LLC, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

JASON THODY, CHIEF, POLICE DEPARTMENT, CITY OF HARTFORD; POLICE DEPARTMENT, CITY OF HARTFORD; AND CITY OF HARTFORD, c/o Attorney Nathalie Feola-Guerrieri, Office of the Corporation Counsel, 550 Main Street, Suite 210, Hartford, CT 06103



Cynthia A. Cannata
Acting Clerk of the Commission