

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

David Collins and  
The Day,

Complainants

against

Docket #FIC 2022-0176

Chief, Police Department,  
City of New London; Police  
Department, City of New London;  
Mayor, City of New London; and  
City of New London,

Respondents

April 12, 2023

The above-captioned matter was heard as a contested case on August 25, 2022, at which time the complainants 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).

Subsequent to the hearing in this matter, pursuant to an order of the hearing officer, the respondents submitted two after-filed exhibits, which have been marked, without objection, as Respondents' Exhibit 3: Affidavit of Lawrence Keating, dated September 6, 2022; and Respondents' Exhibit 4: Affidavit of Brian M. Wright, dated September 6, 2022.

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 January 7, 2022, the complainants requested from the respondents a copy of the video footage from all police body cameras worn on December 31, 2021 by City of New London police officers.
3. It is found that, by email dated January 7, 2022, the respondents acknowledged the complainants' request.
4. It is found that, by email dated March 23, 2022, the complainants followed-up with the respondents on their January 7<sup>th</sup> request.

5. It is found that, by email dated March 24, 2022, the respondents informed the complainants that the requested body camera video footage needed to be downloaded and reviewed for possible exemptions from disclosure.

6. It is found that, by emails dated April 8, 2022, and April 11, 2022, the respondents requested from the complainants a prepayment of \$628.99 for the requested video footage, with redactions.<sup>1</sup>

7. By letter of complaint received April 20, 2022, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with their request described in paragraph 2, above.

8. Section 1-200(5), G.S., provides that:

‘[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.

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 “any 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 requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. It is also found that the requested records are computer-stored records within the meaning of §1-211(a), G.S.

13. At the hearing, the complainants contended that the respondents improperly charged

---

<sup>1</sup> It is found that the respondents initially informed the complainants that the cost for a copy of one responsive video was \$628.99. It is found, however, that subsequent to the filing of the complaint, the respondents informed the complainants that such fee was the cost for a copy of all responsive videos.

fees beyond what is permitted by statute and challenged the exemptions claimed by the respondents.

14. On September 6, 2022, pursuant to an order of the hearing officer, the respondents submitted copies of the requested video footage for in camera inspection, along with an in camera index.<sup>2</sup> The in camera records consist of video footage from five different body worn cameras, which will be identified as IC-2022-0176-Northup, IC-2022-0176-Johnson, IC-2022-0176-Linderson, IC-2022-0176-Lindblom and IC-2022-0176-Nocito. On the in camera index, the respondents claimed that portions of the in camera records are exempt from disclosure pursuant to §§1-210(b)(2), 1-210(b)(3)(B), 1-210(b)(3)(D) and/or 53a-250, et. seq. By affidavit, the respondents also claimed that portions of certain records were accessed by way of the Connecticut Online Law Enforcement Communications Teleprocessing (“COLLECT”) system and therefore exempt from disclosure.

15. The respondents claimed that portions of IC-2022-0176-Northup (07:53-07:56, 09:06-13:28, 22:38-23:00), IC-2022-0176-Linderson (00:00-00:54, 04:45-04:47, 04:53-05:56, 06:12-10:37) and IC-2022-0176-Nocito (00:00-00:52) contain a “mobile data terminal screen” which displays records accessed by way of the COLLECT system.

16. The Commission has previously found that the COLLECT system is a statewide criminal justice system that is dedicated to the law enforcement and criminal justice agencies in the State of Connecticut. See Docket #FIC 2016-0535; Sastre v. Marc Montminy, Chief, Police Department, Town of Manchester; Police Department, Town of Manchester; and Town of Manchester (April 12, 2017). The Commission has also held that the COLLECT system is part of the National Crime Information Center (“NCIC”)<sup>3</sup> system and that records obtained through such system are exempt from disclosure pursuant to §29-164f, G.S., as NCIC records.

17. Section 29-164f, G.S., provides, in relevant part, that “[t]he National Crime Prevention and Privacy Compact is hereby entered into and enacted into law with any and all of the states and the federal government legally joining therein....”

18. In Commissioner of Public Safety v. FOIC, et al., 144 Conn. App. 821, 827 (2013), the Appellate Court clarified that “the compact provides that the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” The Court concluded that §29-164f, G.S., provides a statutory exemption to the disclosure provisions of §1-210(a), G.S. Id. at 831.

19. The Commission takes administrative notice of its previous decisions in which it held that records accessed by way of the COLLECT system are exempt from mandatory disclosure. See e.g., Docket #FIC 2015-518; Lazzari v. Chief, Police Department, Town of

---

<sup>2</sup> The respondents submitted for in camera inspection redacted and unredacted copies of the in camera records.

<sup>3</sup> NCIC is a computerized database of criminal history information, which is maintained by the Federal Bureau of Investigation.

Newington, et. al. (February 10, 2016); and Docket #FIC 2013-562; Anania v. University of Connecticut, et. al. (May 28, 2014).

20. Based on careful consideration of the evidence in the record, it is found that portions of the records described in paragraph 15, above, contain records accessed by way of the COLLECT system.

21. It is concluded that portions of the records described in paragraph 15, above, are exempt from mandatory disclosure pursuant to §29-164f, G.S.<sup>4</sup> It is further concluded that the respondent did not violate §§1-210(a) and 1-212(a), G.S., by withholding from the complainants copies of such records.

22. With respect to the respondents' claim that portions of certain in camera records are exempt from disclosure pursuant to §§1-210(b)(3)(B) and 1-210(b)(3)(D), G.S., such statutes provide that disclosure is not required of:

[r]ecords of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of... (B) the identity of minor witnesses, [and] (D) information to be used in a prospective law enforcement action if prejudicial to such action.

23. On the in camera index, the respondents claimed that portions of the following in camera records contain "juvenile face(s)" and are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S.: IC-2022-0176-Northup (00:04-00:11, 0:21-00:22, 01:51-02:42, 02:52-03:32, 03:46-03:53, 05:22-05:32, 14:07-17:39), IC-2022-0176-Johnson (00:11-18:08), IC-2022-0176-Linderson (01:34-01:51, 02:07-02:16, 02:18-02:19, 02:22-02:30, 02:43-03:13, 12:07-12:11, 12:36-14:20, 14:50-16:01), IC-2022-0176-Lindblom (00:08-02:32, 02:48-03:51, 04:17-04:30, 05:00-05:09, 05:27-09:10, 10:12-11:18, 11:30-11:32, 18:19-18:20, 18:32-18:33, 18:43-18:46) and IC-2022-0176-Nocito (00:54-00:58, 01:15-01:22, 01:55-02:56, 03:15-19:10).

24. After a careful inspection of the in camera records, it is found that the records described in paragraph 23, above, were compiled in connection with the detection or investigation of crime and portions of such records would result in the disclosure of the identity of minor witnesses.

25. It is concluded that portions of the records described in paragraph 23, above, are exempt from disclosure pursuant to §1-210(b)(3)(B), G.S. Accordingly, it is concluded that the

---

<sup>4</sup> On the in camera index, the respondents also claimed that portions of IC-2022-0176-Northup (07:53-07:56, 09:06-13:28, 22:38-23:00), IC-2022-0176-Linderson (00:00-00:54, 04:45-04:47, 04:53-05:56, 06:12-10:37) and IC-2022-0176-Nocito (00:00-00:52) are exempt from disclosure pursuant to §§1-210(b)(3)(D) and 53a-250, et. seq. However, in light of the conclusion in paragraph 21, above, the Commission need not address any further claims of exemption with respect to such records.

respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding from the complainants copies of such records.

26. On the in camera index, the respondents claimed that portions of IC-2022-0176-Northup (21:09-21:20) and IC-2022-0176-Linderson (18:18-18:28) contain a “suspect[’s] phone number” and are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

27. After a careful inspection of the in camera records, it is found that the records described in paragraph 26, above, were compiled in connection with the detection or investigation of crime and portions of such records contain a telephone number of a suspect. It is found, however, that the respondents failed to prove that disclosure of such records would be prejudicial to any prospective law enforcement action. It is found that the respondents failed to prove that such records are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

28. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding from the complainants copies of the records described in paragraph 26, above.

29. On the in camera index, the respondents claimed that portions of IC-2022-0176-Northup (07:16-08:55, 09:06-13:28) and IC-2022-0176-Linderson (05:12-06:04, 06:12-10:37) contain an “officer’s personal cellphone” and “cellphone number”, and are exempt from disclosure pursuant to §1-210(b)(2), G.S.

30. Section 1-210(b)(2), G.S., provides that disclosure is not required of “[p]ersonnel or medical and similar files the disclosure of which would constitute an invasion of personal privacy.”

31. In order to prove the applicability of the invasion of privacy exemption under §1-210(b)(2), G.S., the claimant must first establish that the files in question are personnel or medical or similar files. Second, the claimant must show that disclosure of the records would constitute an invasion of personal privacy, by establishing both of two elements: (1) the information sought does not pertain to a legitimate matter of public concern; and (2) disclosure of such information would be highly offensive to a reasonable person. See Perkins v. Freedom of Information Commission, 228 Conn. 158, 175 (1993).

32. In Connecticut Alcohol and Drug Abuse Commission, et al. v. Freedom of Information Commission, et al. (“CADAC”), 233 Conn. 28, 41 (1995), the Supreme Court further expounded on the threshold test for the exemption contained in §1-210(b)(2), G.S:

We conclude that such a determination requires a functional review of the documents at issue. Just as a "medical" file of an individual has as one of its principal purposes the furnishing of information for making medical decisions regarding that individual, a "personnel" file has as one of its principal purposes the furnishing of information for making personnel decisions regarding the individual involved. If a document or file contains

material, therefore, that under ordinary circumstances would be pertinent to traditional personnel decisions, it is "similar" to a personnel file. Thus, a file containing information that would, under ordinary circumstances, be used in deciding whether an individual should, for example, be promoted, demoted, given a raise, transferred, reassigned, dismissed or subject to other such traditional personnel actions, should be considered "similar" to a personnel file for the purposes of §1-[210](b)(2).

33. It is found that the respondents failed to prove that the in camera records, taken as a whole, are used by the respondents to assist in making employment or medical decisions.

34. It is found that the respondents failed to prove that the in camera records constitute personnel or medical and similar files within the meaning of §1-210(b)(2), G.S. Accordingly, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding from the complainants copies of the portions of the records described in paragraph 29, above.

35. With respect to the \$628.99 copying fee for the video footage, §1-211(a), G.S., provides:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. Except as otherwise provided by state statute, the cost for providing a copy of such data shall be in accordance with the provisions of section 1-212....

36. In turn, §1-212(b), G.S., provides:

The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, other than for a printout which exists at the time that the agency responds to the request for such copy, an agency may include only:

(1) An amount equal to the hourly salary attributed to all agency employees engaged in providing the requested computer-stored public record, including their time performing the formatting or programming functions necessary to provide the copy as requested, but not including search or retrieval costs except as provided in subdivision (4) of this subsection;

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such copying services, if such service is necessary to provide the copying as requested;

(3) The actual cost of the storage devices or media provided to the person making the request in complying with such request; and

(4) The computer time charges incurred by the agency in providing the requested computer-stored public record where another agency or contractor provides the agency with computer storage and retrieval services. Notwithstanding any other provision of this section, the fee for any copy of the names of registered voters shall not exceed three cents per name delivered or the cost thereof to the public agency, as determined pursuant to this subsection, whichever is less. The Department of Administrative Services shall provide guidelines to agencies regarding the calculation of the fees charged for copies of computer-stored public records to ensure that such fees are reasonable and consistent among agencies.

37. It is found that the respondents arrived at the fee of \$628.99 by using the hourly rate of the employee who was trained and charged with reviewing and redacting (i.e., pixelating and removing audio) from the requested video footage (\$612) and copying such footage onto a flash drive (\$16.99).

38. At the hearing, the respondents contended that the process of redacting video footage constitutes “formatting or programming” that changes the format of the original video and results in the creation of a new video.

39. It is found that the pixelations and removal of audio conducted by the respondents were performed using existing computer software and that the respondents did not have to develop a program or contract with an outside entity to develop a program in order to comply with the records request.

40. It is found that the respondents failed to prove that the tasks, described in paragraph 37, above, constituted formatting and programming functions within the meaning of §1-212(b)(1), G.S.

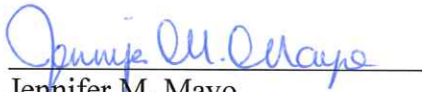
41. It is concluded that the \$612 fee is not allowable under §1-212(b)(1), G.S.

42. Nevertheless, pursuant to §1-212(c), G.S., “[a] public agency may require the prepayment of any fee required or permitted under the Freedom of Information Act if such fee is estimated to be ten dollars or more....” It is found that the fee for copying the footage onto a flash drive was more than ten dollars (i.e., \$16.99) and therefore the respondents were permitted to require prepayment of such fee.

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

1. The respondents shall provide the complainants with unredacted copies of the requested body worn camera video footage.
2. In complying with paragraph 1 of this order, the respondents shall redact the portions of the requested records described in paragraph 15 of the findings, above, and may redact the portions of the requested records described in paragraph 23 of the findings, above.
3. The respondents may require prepayment of the \$16.99 fee for the copying of the requested records onto a flash drive.
4. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a), 1-212(a) and 1-212(b), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 12, 2023.

  
Jennifer M. Mayo  
Acting Clerk of the Commission

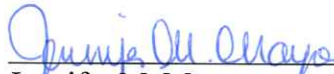


PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**DAVID COLLINS AND THE DAY**, 47 Eugene O'Neill Drive, New London, CT 06320

**CHIEF, POLICE DEPARTMENT, CITY OF NEW LONDON; POLICE DEPARTMENT, CITY OF NEW LONDON; MAYOR, CITY OF NEW LONDON; AND CITY OF NEW LONDON**, c/o Attorney Jeffrey T. Londregan and Attorney Brian K. Estep Conway, Londregan, Sheehan & Monaco, PC, 38 Huntington Street, New London, CT 06320

  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission