

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joseph Sargent,

Complainant

against

Docket # FIC 2022-0104

Chief, Police Department, City of
Bridgeport; Police Department, City of
Bridgeport; and City of Bridgeport,

Respondents

February 22, 2023

The above-captioned matter was heard as a contested case on July 5, 2022 and September 1, 2022, at which times 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 hearings were conducted through the use of electronic equipment (remotely) pursuant to §149 of Public Act 21-2 (June Special Session).

Pursuant to the order of the hearing officer, the respondents submitted two after-filed exhibits. Such after-filed exhibits were admitted as Respondents' Exhibit 1 (after-filed): Affidavit of Sergeant Ashley Taylor, and Respondents' Exhibit 1 (after-filed): Affidavit of Beronica Gill.

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 August 2, 2021, the complainant requested that the respondents provide him with a copy of "the following records that relate to and/or concern the following matter:

Name of Defendant: Andre Cayo
Date of Arrest: on or about 11/6/2019
Docket Number: F02B-MV19-0702333-S
Location: Bridgeport, CT
Charges: Reckless Driving 14-222, Failure to Carry Reg/Ins Card 14-13(1)

(1) Any and all audio, video, photographic and/or digital recordings, concerning and/or relating to the arrest of Andre Cayo, including but not limited to: a. dispatcher recordings; b. recordings of telephone calls; c. recordings of body cameras; d. recordings of dashboard cameras; (2) all police reports related to the arrest."

3. It is found that the respondents acknowledged the request on August 2, 2021.
4. It is found that, by emails dated December 10, 2021 and February 28, 2022, the complainant inquired with the respondents about the status of his pending request, but the respondents did not respond.
5. By email filed March 3, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request only for video recordings, as identified in paragraph 2, above,
 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 June 28, 2022 the respondents denied the request, citing §54-142a, G.S.
11. Section 54-142a, G.S., known as the “erasure statute”, provides
 - (a) Whenever in any criminal case, on or after October 1, 1969, the accused, by a final judgment, is found not guilty of the charge or the charge is dismissed, all police and court records and records of any state's attorney pertaining to such charge shall be erased upon the expiration of the time to file a writ of error or take an

appeal, if an appeal is not taken, or upon final determination of the appeal sustaining a finding of not guilty or a dismissal, if an appeal is taken....

(c)(1) Whenever any charge in a criminal case has been nolle in the Superior Court, or in the Court of Common Pleas, if at least thirteen months have elapsed since such nolle, all police and court records and records of the state's or prosecuting attorney or the prosecuting grand juror pertaining to such charge shall be erased, except that in cases of nolle entered in the Superior Court, Court of Common Pleas, Circuit Court, municipal court or by a justice of the peace prior to April 1, 1972, such records shall be deemed erased by operation of law and the clerk or the person charged with the retention and control of such records shall not disclose to anyone their existence or any information pertaining to any charge so erased, provided nothing in this subsection shall prohibit the arrested person or any one of his heirs from filing a petition to the court or to the records center of the Judicial Department, as the case may be, to have such records erased, in which case such records shall be erased....

(e)(1) The clerk of the court or any person charged with retention and control of such records in the records center of the Judicial Department or any law enforcement agency having information contained in such erased records shall not disclose to anyone, except the subject of the record, upon submission pursuant to guidelines prescribed by the Office of the Chief Court Administrator of satisfactory proof of the subject's identity, information pertaining to any charge erased under any provision of this section and such clerk or person charged with the retention and control of such records shall forward a notice of such erasure to any law enforcement agency to which he knows information concerning the arrest has been disseminated and such disseminated information shall be erased from the records of such law enforcement agency. Such clerk or such person, as the case may be, shall provide adequate security measures to safeguard against unauthorized access to or dissemination of such records or upon the request of the accused cause the actual physical destruction of such records, except that such clerk or such person shall not cause the actual physical destruction of such records until three years have elapsed from the date of the final disposition of the criminal case to which such records pertain....

12. At the hearing, the complainant contended that at the time of the request, described in paragraph 2, above, the charges were not dismissed and that §54-142a, G.S., was not applicable. Additionally, the complainant contended that any video recordings that were created as part of the respondent Bridgeport Police Department's customary routine, prior to charging

Mr. Cayo with a crime, were not erased by operation of §54-142a, G.S. The respondents disputed both contentions.

13. In Commissioner, State of Connecticut Department of Emergency Services and Public Protection v. Freedom of Information Commission (hereinafter Commissioner v. Freedom of Information Commission), HHB-CV14-602708-S, 2019 WL 4201551, (Aug. 20, 2019), the court concluded that, when a charge is subject to erasure pursuant to §54-142a, G.S., that does not necessarily mean that all law enforcement records from the underlying incident or investigation are barred from disclosure. Instead, only records “pertaining to [a] charge” that results in a dismissal, nolle, or acquittal are deemed erased pursuant to §§54-142a(a) and (c), G.S. The court analyzed the phrase “pertaining to [an erased] charge” and concluded that §54-142a, G.S., prohibits disclosure of transcripts, police reports, charging documents and records that disclose “when or where a person was arrested, the nature of or circumstances surrounding the crime charged or the names of witnesses from whom further information may be obtained.” (quoting State v. West, 192 Conn. 488, 496 (1984)).

14. The hearing officer ordered the respondents to submit to the Commission for in camera inspection an unredacted copy of the video recordings at issue, along with an in camera index. The respondents submitted to the Commission two flash-drives containing the in camera records, and on the index claimed that each recording is exempt from disclosure pursuant to §§ 54-142a(a) and 54-142c, G.S. The in camera records shall hereinafter be referenced as IC-2022-0104-1A through IC-2022-0104-1H; and IC-2022-0104-2A through IC-2022-0104-2E.¹

15. It is found that, on August, 6, 2019, the individual identified in paragraph 2, above, was involved in an incident that resulted in his arrest by the respondent Bridgeport Police Department for reckless driving (§14-222, G.S.) and interfering with an officer (§53a-167a, G.S.).

16. It is found that, on August 20, 2021, the charges identified in paragraph 15, above, were dismissed. It is further found that on September 9, 2021, all police records maintained by a law enforcement agency which “pertained to” the dismissed criminal charges were statutorily erased by operation of §54-142a, G.S.

17. Consequently, it is found that, at the time of the August 2, 2021 request, no records pertaining to the criminal charges were erased by operation of §54-142a, G.S. It is therefore concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the in camera records from the complainant at the time of his request.

18. Notwithstanding the finding and conclusion set forth in paragraph 17, above, it is found, based on careful inspection, that the in camera records “pertain to” the dismissed criminal charges identified in paragraph 15, above. It is therefore found that the in camera records were erased on September 9, 2021 by operation of §54-142a, G.S.

¹ The hearing officer notes that IC-2022-0104-1H contains no audio or video feed. The hearing officer also notes that IC-2022-0104-2A is not responsive to the complainant’s request. Therefore, IC-2022-0104-1H and IC-2022-0104-2A shall not be addressed further herein.


19. The Commission previously concluded that the erasure statute supersedes the disclosure requirements of the FOI Act and therefore has declined to order disclosure of statutorily erased records. See Docket No. FIC 2012-520, Robert Cushman v. Chief, Police Department, City of New London, and Police Department, City of New London (April 24, 2013); Docket No. FIC 1999-353, Michele Graham v. Police Department, City of Stratford (Feb. 23, 2000); and Docket No. FIC 2017-0039, James Torlai v. Chief, Police Department, Town of Darien; and Police Department, Town of Darien (Dec. 11, 2019). Accordingly, in this case, the Commission also declines to order disclosure of erased records.

20. On brief, the complainant argued that “the video recordings and information were obtained or collected by the Bridgeport police prior to the suspect being charged with the crime and therefore are not records that pertain to the crime ... [i]f the suspect in this case were not charged with a crime, these records would and should be available to the public. The subsequent arrest of a suspect does not subject these records to being arrested by operation of Section 54-142a.”

21. The complainant’s argument is unavailing. In this case, the records responsive to the complainant’s request and reviewed in camera were not obtained or collected by the respondents *prior to* Mr. Cayo’s arrest, or in the course of the police department performing its customary community caretaking function. Rather, the in camera records were generated at the time of and subsequent to Mr. Cayo’s arrest and capture the nature and circumstances surrounding such arrest and charges. Consequently, such records are erased by operation of §54-142a, G.S.

On the basis of the entirety of the record concerning the above-captioned complaint, no order by the Commission is hereby recommended.

Approved by Order of the Freedom of Information Commission at its regular meeting of February 22, 2023.

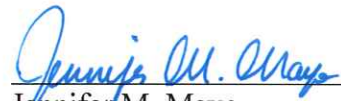

Jennifer M. Mayo
Acting Clerk of the Commission

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:

JOSEPH SARGENT, The Law Office of Joseph P. Sargent, 1595 Black Rock Turnpike, Fairfield, CT 06825

CHIEF, POLICE DEPARTMENT, CITY OF BRIDGEPORT; POLICE DEPARTMENT, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission