

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Jermaine Rogers,

Complainant

against

Docket # FIC 2022-0169

Office of the City Attorney, City of
Bridgeport; and City of Bridgeport,

Respondents

March 22, 2023

The above-captioned matter was heard as a contested case on September 13, 2022 and October 20, 2022, at which times the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint.

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. By email dated April 13, 2022, and filed on April 14, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to provide him with records he requested on June 21, 2021, August 23, 2021, and March 16, 2022.
3. At the hearing in this matter, and in their post hearing brief, the respondents argued that the Commission lacks subject matter jurisdiction to address the complainant's allegations with respect to the June 21, 2021, and August 23, 2021, requests.
4. Section 1-206(a), G.S., provides, in relevant part, as follows:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request. . . . Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed a denial.
5. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 ... may appeal therefrom to the Freedom of Information Commission, by filing a notice of appeal with said commission. A notice of appeal shall be filed not later than thirty days after such denial.... [Emphasis added.]

6. With respect to the allegation concerning the June 21, 2021, request, it is found that on June 21, 2021, the complainant requested from the respondent office, “a complete discovery that exist” (sic) regarding “Jermaine Rogers-claim #836318 (PRO SE)”, including but not limited to, “any Paper, Audio, Video Media Discovery” (“June 21, 2021 request”). The request was sent via the city’s FOI electronic portal.¹

7. It is found that on June 21, 2021, the respondent office acknowledged receipt of the request, described in paragraph 6, above, and informed the complainant, in relevant part, “we are reviewing your request and will contact you in writing when the requested information is available”.

8. It is found that the respondents did not deny or comply with the June 21, 2021 request within four business days of such request and that therefore, such request was constructively denied on June 25, 2021, pursuant to §1-206(a), G.S.

9. It is found that, in accordance with the provisions of §§1-206(a) and 1-206(b)(1), G.S., in order for the Commission to have subject matter jurisdiction over this complaint as it relates to the June 21, 2021 request, the complainant was required to file his appeal within 30 days of the date of the denial.

10. It is found that the complainant did not file his appeal, as it relates to the June 21, 2021 request, until April 14, 2022, almost 10 months after the date of the denial.

11. Consequently, it is concluded that the Commission lacks subject matter jurisdiction over this complaint, as it relates to the June 21, 2021, request.

12. With respect to the allegation concerning the August 23, 2021 request, it is found that on August 23, 2021, the complainant, via the city’s FOI portal, requested that the respondents provide him with the following Office of Internal Affairs records:

[a]ny and all records pursuant to the incident that occur (sic) on 3-17-2020 resulting in the civilian complain (sic) or a case number 201-030 that is now complete please provide all records to include but not limited to any video and audio recordings, body cam

¹ The portal allows requesters to submit FOI requests electronically to the various city of Bridgeport departments. Once registered on the portal (by name or anonymously) a requester may select, from a drop-down menu, the department to which the request is being directed. All requests submitted via the portal are managed by the respondent office, with such office serving as a liaison between the requester and the department to which the request is directed.

footage, dashboard footage, administrative reports, officer reports, incident reports, etc.

(“August 23, 2021 request”).

13. It is found that on August 23, 2021, the respondent office acknowledged receipt of the request, described in paragraph 12, above, and informed the complainant that it was being reviewed and he would be contacted when the requested records were available.

14. It is found that the respondents did not deny or comply with the August 23, 2021 request within four business days of such request and that therefore, such request was constructively denied on August 27, 2021, pursuant to §1-206(a), G.S.

15. It is found that, in accordance with the provisions of §§1-206(a) and 1-206(b)(1), G.S., in order for the Commission to have subject matter jurisdiction over this complaint as it relates to the August 23, 2021 request, the complainant was required to file his appeal within 30 days of the date of the denial.

16. It is found that the complainant did not file his appeal, as it relates to the August 23, 2021 request, until April 14, 2022, almost 8 months after the date of the denial.

17. Consequently, it is concluded that the Commission lacks subject matter jurisdiction over this complaint, as it relates to the August 23, 2021, request.

18. With respect to the allegation concerning the March 16, 2022 request², it is found that on March 16, 2022, the complainant requested the following from the respondent office³:

[a]ny and all records pursuant to the incident that occur (sic) on 3-17-2020 resulting in the civilian complain (sic) or a case number 201-030 that is now complete please provide all records to include but not limited to any video and audio recordings, body cam footage, dashboard footage, administrative reports, officer reports, incident reports, etc.

(“March 16, 2022 request” or “requested records”).

19. It is found that on March 16, 2022, the respondent office acknowledged receipt of the request and informed the complainant that it was being reviewed, and that he would be contacted when the requested records were available.

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

² The respondents do not dispute the Commission’s jurisdiction with respect to the March 16, 2022, request.

³ Respondents’ testimony at the hearing in this matter, and respondents’ post hearing brief at pg. 3, stating that the March 16, 2022 request sought “substantially the same, if not identical records, as the Complainant’s August 23, 2021 request.”

“[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.

21. Section 1-210(a), G.S., provides, in relevant part:

[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.

22. Section 1-212(a), G.S., in relevant part, further provides: “[a]ny person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

23. It is concluded that the requested records are “public records” within the meaning of §§ 1-200(5) and 1-210(a), G.S.

24. At the September 13, 2022 hearing in this matter, the respondent office provided the complainant with a DVD⁴ containing approximately 40 minutes of police officers’ body camera footage, responsive to the March 16, 2022 request. Such footage comprised both audio and video recordings.

25. It is found however, that the footage described in paragraph 24, above, contained redactions, and the respondents claimed the redacted portions are exempt from disclosure.

26. At the September 13, 2022 hearing in this matter, the respondents testified that they maintained additional records responsive to the March 16, 2022 request, which they had not yet provided to the complainant because their review of such records was not completed.

27. The hearing officer continued the hearing to October 20, 2022, to permit the respondents an opportunity to complete their review, provide the complainants with additional responsive records, and identify any claims of exemption for records being redacted or entirely withheld.

28. It is found that on October 18 and 19, 2022, the respondents provided the complainant with the following additional records responsive to his March 26, 2022 request: approximately 330 pages of the OIA report, a photo, body and dash camera footage, and transcripts of audio

⁴ A digital disc on which data is stored.

interviews conducted by the OIA.⁵ It is also found that on October 20, 2022, the respondents also provided the complainant with audio recordings of interviews.

29. At the October 20, 2022 hearing in this matter, the complainant contended that he did not believe all responsive records had been provided to him. As an example, he contended that the respondents did not provide video footage of him inside the police vehicle, which he contended should exist. The complainant also challenged the redactions made to the records, and contended that the quality of the video and audio footage was poor.

30. At the October 20, 2022 hearing in this matter, the respondents argued that the Commission lacked jurisdiction to address the issues of redactions and thoroughness of the search conducted for records, because those issues were not fairly raised in the complaint.

31. With respect to the Commission's jurisdiction to address the redactions and thoroughness of the respondents' search, it is found that as of April 14, 2022, the date of the filing of the complaint in this matter, the respondents had not yet provided the complainant with any responsive records, nor informed him that they would be providing him with redacted records. They had also not confirmed the status of their search.

32. It is found that the respondents first informed the complainant and the Commission of the redactions, and the status of their search, at the September 13, 2022 hearing in this matter.

33. Pursuant to §1-210(a), G.S., the complainant had the right to promptly obtain a complete copy of all the public records he requested. Necessarily implicit in that right, is the right to challenge limitations placed on such right, including, the withholding of responsive records and/or portions thereof, and failure to conduct a thorough search to locate responsive records.

34. It is found that the complainant could not have alleged in his complaint, which was filed on April 14, 2022, that the respondents' redactions were improper, and their search inadequate, since the respondents' position on those issues only became known to the complainant on September 13, 2022.

35. It is therefore found that the complainant timely raised the issues concerning the respondents' redactions and search at the September 13, 2022 hearing in this matter.

36. Consequently, it is concluded that the Commission has jurisdiction to address the issues concerning the respondents' redactions and search.

37. With respect to the search conducted, it is found that the respondents conducted a thorough search and that all responsive records were provided, with the exception of certain redactions made to the video footage, audio communications, and paper documents provided on September 13, 2022, (as described in paragraphs 24 and 25, above), and on October 18, 19, and

⁵ The complainant was unable to access the records provided to him by the respondents, via an electronic link, on October 18, 2022. On October 19, 2022, he notified the respondents, who, on the same day provided him with a thumb drive instead, which he was able to access.

20, 2022, (as described in paragraph 28, above).⁶ Further, with respect to the quality of the video and audio footage provided to the complainant, it is found that the respondents provided him with a copy of the footage they maintained.

38. Regarding the redactions made to the video footage, audio communications, and paper documents, referenced in paragraph 37, above, the respondents claimed that such redactions consist of (i) communications that are unrelated and non-responsive to the request, (ii) communications and transmissions exempt from disclosure pursuant to §1-210(b)(3)(E), and (iii) communications exempt from disclosure pursuant to §29-164f, G.S.⁷

39. With respect to the respondents' claim that the communications they redacted are unrelated and non-responsive to the request, it is found based on the respondents' testimony, that such redactions consist of the audio of calls for service, contained on the radios of the police officers on the scene, which audio was wholly unrelated and non-responsive to the complainant's request.

40. It is therefore concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding the unrelated and non-responsive audio communications, described in paragraph 39, above.

41. It is found, based on the respondents' testimony, that the respondents redacted other audio recordings of the police officers' radio communications and transmissions (hereinafter "other audio recordings"). With regard to such other audio recordings, the respondents argued, in their post hearing brief, that "[t]o the extent that the radio transmissions in the footage include discussions between officers and/or with the City of Bridgeport Emergency Operations Center dispatchers, such portions are exempt from disclosure pursuant to C.G.S. Sec. 1-210(b)(3)(E)."⁸

42. Section 1-210(b)(3)(E), G.S., permits non-disclosure 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...investigatory techniques not otherwise known to the general public.

43. The general rule under the FOI Act is disclosure: exceptions to this rule must be narrowly construed; and the burden of establishing the applicability of an exemption clearly rests

⁶ The paper documents were provided to the complainant in electronic form on October 18 and 19, 2022. See footnote 5, stating the complainant was provided a thumb drive.

⁷ At the hearing in this matter, the respondents testified that an image of the driver's license of a passenger who was in the complainant's vehicle was also redacted. The respondents did not claim a statutory exemption as the basis for withholding such driver's license image, however, the complainant did not contest the respondents' redaction of the driver's license image, and therefore, such redaction shall not be addressed herein.

⁸ Respondents' post hearing brief at pg. 8.

upon the party claiming the exemption. New Haven v. FOI Comm'n, 205 Conn. 767, 775 (1988); Ottochian v. FOI Comm'n, 221 Conn. 393, 398 (1992). “This burden requires the claimant of the exemption to provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.” Director, Retirement & Benefits Service v. FOI Commission, 256 Conn. 764, 773 (2001), citing New Haven, supra.

44. It is found that the respondents offered no evidence at the hearing to prove the applicability of the exemption, and therefore failed to prove that the other audio recordings are records of law enforcement agencies, not otherwise available to the public, which records were compiled in connection with the detection or investigation of crime.

45. It is also found that the respondents offered no evidence, and therefore failed to prove, that disclosure of the other audio recordings would not be in the public interest because it would result in the disclosure of investigatory techniques not otherwise known to the general public, within the meaning of §1-210(b)(3)(E), G.S.

46. It is therefore concluded that the respondents failed to prove that the other audio recordings are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S.

47. Consequently, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by withholding the other audio recordings.

48. With respect to the respondents’ claim that portions of the records are NCIC⁹ records and therefore exempt from disclosure, in Commissioner of Public Safety v. FOIC, et al., 144 Conn. App. 821 (2013), the Appellate Court concluded that NCIC records are exempt from disclosure pursuant to §29-164f, G.S.

49. It is found, based on the respondents’ testimony, that certain portions of the records at issue are NCIC records or contain NCIC information, within the meaning of §29-164f, G.S.

50. Accordingly, it is concluded that such portions are exempt from disclosure pursuant to §29-164f, G.S., and therefore the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding such portions.

51. Regarding the issue of promptness, the Commission has previously stated that the meaning of the word “promptly” in §1-210(a) G.S., means, “quickly and without undue delay, taking into account all of the factors presented by a particular request ... [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request. See FOI

⁹ “National Crime Information Center” or “NCIC” is a computerized database of criminal history information, which is maintained by the Federal Bureau of Investigation.

Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

52. It is found that the delay in providing the requested records was due to the volume of records that needed to be reviewed (specifically, hundreds of pages of the OIA report and approximately 6 hours of body and dash camera footage), and the fact that only one staff member (in the respondent office) was responsible for conducting such review and for redacting such records, prior to disclosing them to the complainant.

53. It is found that the respondents were aware that the requested records were of particular importance to the complainant, although the complainant had not informed the respondents of a specific timeframe by when the records were needed.

54. Upon consideration of all of the factors presented with regard to this particular request, it is found that there was no undue delay on the part of the respondents in providing the responsive records, or portions thereof, to the complainant.

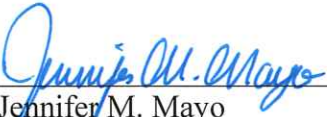
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. The respondents shall provide to the complainant an unredacted copy of the records identified in paragraph 41, above, free of charge. Such records shall be provided not later than one month from the date of the Notice of the Final Decision in this matter.

2. Henceforth, the respondents shall strictly comply with the provisions of §§1-210(a) and 1-212(a), G.S.

3. With regard to handling future requests, the respondents are encouraged to provide responsive records in installments, on a rolling basis, until all responsive records have been provided.

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



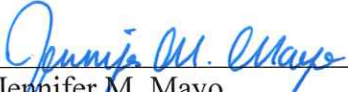
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JERMAINE ROGERS, 1188 Main Street, Apt. 222, Bridgeport, CT 06604

OFFICE OF THE CITY ATTORNEY, 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 and Attorney Michael C. Jankovsky, City of Bridgeport, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604



Jennifer M. Mayo
Acting Clerk of the Commission