

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jon Schoenhorn,

Complainant

against

Docket # FIC 2022-0598

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

Respondents

October 11, 2023

The above-captioned matter was heard as a contested case on April 21, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, 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. It is found that by letter dated August 1, 2022, the complainant requested that the respondents provide him with copies of “any dash cam (mvr) videos, or body camera, and other digital files” related to “a multi-vehicle automobile accident that occurred on or around 8pm on Friday, October 29, 2021 on the east bound lanes [of Interstate 84 in Plainville].”¹
3. It is found that by letter dated August 1, 2022, the respondents acknowledged the complainant’s request.
4. It is found that by email dated December 12, 2022, an investigator working for the complainant renewed the complainant’s request.
5. By letter of complaint filed December 22, 2022, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying the request described in paragraph 2, above.

¹ The complainant also requested other records related to the same motor vehicle accident. At the hearing in this matter, the complainant acknowledged that the respondents provided him with copies of such records, and that the only records that remain at issue are the video recordings described 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 concluded that the records described in paragraph 2, above, to the extent they exist, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

10. It is found that, on December 28, 2022, the respondents notified the complainant that “a search of our records has been completed and the requested video(s) has not been located as the retention period is only ninety (90) days for video recordings and there is no indication that any recordings were seized as evidence (your request was received August 1, 2022).”

11. At the hearing in this matter, the respondents testified, and it is found, that any video recordings responsive to the complainant’s request had been deleted prior to the date of the complainant’s request pursuant to the respondents’ record retention policy. It is found that the respondents’ general policy is to retain body camera and dashboard camera recordings for 90 days, unless such recordings are tagged to be retained for a longer time period. It is further found that the complainant submitted his request to the respondents approximately 9 months after the date of the motor vehicle accident described in paragraph 2, above.

12. At the hearing in this matter, the complainant conceded that the video recordings at issue did not exist as of the date of the request. However, the complainant contended that the respondents violated the FOI Act by failing to retain such recordings. In particular, the complainant contended that §29-6d, G.S., requires the respondents to comply with the Police Officer Standard and Training Council (“POST”) policy regarding the retention of body camera and dashboard camera footage. The complainant further contended that such policy required the respondents to retain the video recordings at issue.

13. However, it is well settled that this Commission does not have jurisdiction over matters relating to the retention and destruction of public records. Rather, authority over such matters rests with the Public Records Administrator, pursuant to §§1-18 and 11-8 through 11-8b, G.S., and with the Office of the State's Attorney, pursuant to §1-240, G.S. See *Cushman v. Director, Central Communications, City of Middletown, et al.*, Docket #FIC 2019-0719, ¶22 (Nov. 18, 2020); *Montoya v. Superintendent of Schools, Westport Public Schools, et al.*, Docket #FIC 2019-0607, ¶17 (June 23, 2021); *Connolly v. Mayor, City of Hartford, et al.*, Docket #FIC 1997-397, ¶12 (April 8, 1998); *Bahramian v. City and Town of Meriden, et al.*, Docket #FIC 1979-220, ¶6 (Feb. 26, 1980).

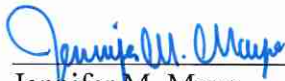
14. With respect to the complainant's contention that §29-6d, G.S., required the respondents to comply with the POST policy regarding the retention of body camera and dashboard camera footage, nothing in either the FOI Act or §29-6d, G.S., suggests that the respondents' failure to comply with such policy constitutes a violation of the FOI Act.

15. Based on the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged by the complainant.

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

1. The complaint is dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 11, 2023.



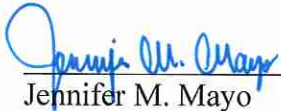
Jennifer M. Mayo
Acting Clerk of the Commission

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:

JON SCHOENHORN, c/o Attorney Jon L. Schoenhorn, Jon L. Schoenhorn & Associates, LLC, 108 Oak Street, Hartford, CT 06106

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 Matthew Reed, Department of Emergency Services & Public Protection, 1111 Country Club Road, Middletown, CT 06457



Jennifer M. Mayo
Acting Clerk of the Commission