

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Michael Ward,

Complainant

against

Docket # FIC 2023-0346

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

Respondents

June 12, 2024

The above-captioned matter was heard as a contested case on December 5, 2023 and February 1, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

On December 1, 2023, pursuant to the order of the hearing officer, the Commissioner of the Department of Emergency Services and Public Protection (“DESPP”) and DESPP were added as respondents in this matter.

On December 5, 2023, pursuant to the order of the hearing officer, DESPP and the Commissioner of DESPP were removed as parties from this matter.¹

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 filed June 30, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for the following records:
 - (a) An investigative report relating to a Citizens’ Complaint submitted by the complainant regarding an incident that occurred on May 27, 2023; and
 - (b) Body worn camera (“BWC”) footage from one of the officers involved in the May 27, 2023 incident described in paragraph 2(a), above.

¹ Because DESPP and the Commissioner of DESPP were removed and are no longer parties to this matter, references in this decision to “the respondents” refer to the Chief of the Stamford Police Department, the Stamford Police Department, and the City of Stamford.

3. 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.

4. 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.

5. 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.”

6. It is concluded that the records described in paragraph 2, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

Factual Background and Procedural History

7. It is found that on or around June 6, 2023, the complainant submitted the Citizen Complaint described in paragraph 2(a), above, to the respondent Stamford Police Department (“Police Department”).

8. It is found that on June 8, 2023, the Police Department provided the complainant with a disposition letter regarding the Citizen Complaint, which stated that the “Police Department’s Internal Affairs Unit has closed out the investigation as ‘Unfounded and Exonerated.’”

9. It is found that on or around June 12, 2023, the complainant requested that the respondents provide him with a copy of the BWC footage described in paragraph 2(b), above.

10. It is found that on June 12, 2023, the respondents acknowledged the complainant’s request for the BWC footage and notified the complainant that the respondents charge “a fee of \$25.00 for [BWC] footage release that does not require redaction.” It is further found that on June 20, 2023, after the complainant paid the \$25.00 fee, the respondents provided the complainant with a link to download the BWC footage he requested. It is also found that the

respondents notified the complainant that the video would only be accessible for 7 days, after which it would expire “due to security concerns.”²

11. It is found that on June 20, 2023, the complainant requested a copy of the BWC footage that did not expire so he could retain it for later use. It is further found that on June 23, 2023, the complainant followed up on such request. It is found that the respondents did not respond to such inquiries.

12. It is found that in the interim, on June 15, 2023, the complainant requested a copy of the investigative report described in paragraph 2(a), above. It is further found that the respondents did not respond to such request.

13. It is found that on June 27, 2023, the complainant followed up on the requests described in paragraphs 11 and 12, above.

14. It is found that by email dated June 28, 2023, the Law Department for the City of Stamford, on behalf of the respondents, denied the complainant’s requests, and notified the complainant that the respondents were seeking a determination from the Commissioner of DESPP that the complainant was “not entitled to receive any documents or videos from the [Police Department] pursuant to [§1-210(b)(19), G.S.]”³ Such email further notified the complainant that the Police Department would “not respond to [the complainant’s] emails or telephone calls,” and requested that the complainant “immediately cease and desist from calling and emailing the Law Department, as it is not our intention to respond to you.”⁴

15. On November 14, 2023, the respondents moved to add the Commissioner of DESPP as a party in this matter on the basis that the respondents had sought a determination from the Commissioner “that the documents sought by the complainant in this matter are exempt from production” pursuant to §1-210(b)(19), G.S.

16. On November 30, 2023, the respondents submitted to the Commission a letter from the Commissioner of DESPP (“DESPP Letter”), in which the Commissioner determined that disclosure of certain public records maintained by the Police Department would result in a safety risk within the meaning of §1-210(b)(19), G.S.

² The Commission notes that §§1-211(a) and 1-212(b), G.S., which establish the fees that public agencies may charge for copies of electronic public records, do not appear to permit public agencies to charge a flat fee for the provision of electronic records under these circumstances. Because the complainant did not raise that issue, however, it will not be addressed further in this decision.

³ Section 1-210(b)(19), G.S., provides that public agencies are not required to disclose “[r]ecords when there are reasonable grounds to believe disclosure may result in a safety risk Such reasonable grounds shall be determined by the Commissioner of [DESPP], after consultation with the chief executive officer of a municipal, district or regional agency, with respect to records concerning such agency.”

⁴ The Commission notes that such email did not inform the complainant how he would be able to exercise his right to receive copies of public records from the Police Department under the FOI Act, given the instruction that he should not contact either the Police Department or the Law Department.

17. As noted on page 1, above, on December 1, 2023, pursuant to the order of the hearing officer, DESPP and the Commissioner of DESPP were added as respondents in this matter. However, at the December 5, 2023 hearing, DESPP represented that the DESPP Letter concerned records that were not at issue in this matter, and that the respondents never requested that the Commissioner of DESPP issue a determination that disclosure of the records at issue would result in a safety risk. Based on that representation, pursuant to the order of the hearing officer and absent objection from the complainant or the respondents, DESPP and the Commissioner of DESPP were removed as respondents.

The Investigative Report

18. At the December 5, 2023 hearing, the respondents acknowledged that they did not provide the complainant with a copy of the investigative report described in paragraph 2(a), above, and that they did not request a determination from the Commissioner of DESPP that disclosing the investigative report would result in a safety risk. The respondents initially claimed that, notwithstanding their failure to request such a determination, the Commission should conclude that the investigative report was exempt from disclosure pursuant to §1-210(b)(19), G.S., because “there is content in the report that would be dangerous for [the complainant] to see.” However, when the hearing officer inquired as to the legal basis for such contention, given that §1-210(b)(19), G.S., expressly provides that the determination of whether there are reasonable grounds to believe that disclosure would result in a safety risk “shall be determined by the Commissioner of [DESPP],” the respondents withdrew their claim and provided the complainant with a copy of the investigative report.⁵

19. The complainant claimed that the copy of the investigative report he was given at the December 5, 2023 hearing was not a complete and accurate copy of the report he requested. However, the respondents did not have a witness with the requisite knowledge available to testify regarding such issues. Accordingly, the case was continued to allow the respondents the opportunity to present evidence regarding whether the investigative report provided to the complainant constituted the full scope of records responsive to the complainant’s request.

20. At the February 1, 2024 continued hearing, the respondents presented testimony from the Internal Affairs Sergeant that conducted the investigation and drafted the investigative report at issue. Based on such testimony, it is found that the investigative report provided to the complainant was a complete and accurate copy of the report requested by the complainant, and that the respondents do not maintain any additional records responsive to the complainant’s request described in paragraph 2(a), above.

21. However, it is further found that the respondents failed to present any evidence to justify their June 28, 2023 denial of the complainant’s request for the investigative report, as described in paragraph 14, above.

22. Based on the foregoing, it is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., by denying the request for the records described in paragraph 2(a), above.

⁵ The investigative report was marked as Respondents’ Exhibit B.

The BWC Videos

23. It is found that as of the December 5, 2023 hearing in this matter, the respondents had not provided the complainant with a copy of the BWC footage he requested, other than the temporary link described in paragraph 10, above. It is further found that shortly before the February 1, 2024 continued hearing, the respondents provided the complainant with a copy of such footage.

24. The respondents claimed that because they provided the complainant with the temporary link to view the BWC footage, they were not required to comply with the complainant's request for another copy. However, the respondents could not identify any provision of the FOI Act that would support such contention. Rather, when the hearing officer inquired as to the legal basis of such claim, the respondents replied only that they were relying on "common sense."

25. It is found that the complainant was unable to watch all of the BWC footage before the link described in paragraph 10, above, expired. It is further found that by email dated June 29, 2023, the complainant followed up with the respondents to notify them that he did not have a chance to review all of the BWC footage before the link expired, and again requested another copy of such footage. It is found that the respondents did not respond to the complainant's email.

26. It is concluded that, although the respondents ultimately provided the complainant with a copy of the BWC footage shortly before the continued hearing, the respondents violated §§1-210(a) and 1-212(a), G.S., when they denied the complainant's request for such footage on June 28, 2023, as described in paragraph 14, above.

Civil Penalty

27. In his closing argument during the February 1, 2024 continued hearing, the complainant requested, for the first time, that the Commission impose a civil penalty against the respondents.

28. At the time of the complaint, §1-206(b)(2), G.S., provided in relevant part:

[U]pon the finding that a denial of any right created by the Freedom of Information Act was without reasonable grounds and *after the custodian or other official directly responsible for the denial has been given an opportunity to be heard* at a hearing conducted in accordance with sections 4-176e to 4-184, inclusive, the commission may, in its discretion, impose against the custodian or other official a civil penalty of not less than twenty dollars nor more than one thousand dollars.⁶ (Emphasis added.)

⁶ Section 1-206(b)(2), G.S., has since been amended to increase the maximum civil penalty to \$5,000.

29. Because the complainant did not raise the issue of a civil penalty until after the close of evidence, the respondents were not afforded an opportunity to be heard on such request, as required by §1-206(b)(2), G.S.

30. Based on the foregoing, the Commission in its discretion declines to consider the imposition of a civil penalty in this matter.⁷

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

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

Approved by Order of the Freedom of Information Commission at its regular meeting of June 12, 2024.



Molly E. Steffes
Acting Clerk of the Commission

⁷ The Commission notes that the complainant's conduct during the contested case hearing process was disrespectful, disruptive, and generally lacking in decorum. The complainant is cautioned that, in accordance with §§1-206(b)(3)(C) and 1-206(b)(3)(D), G.S., the Commission may consider the nature, content, and language of verbal and written communications made to any official of any agency by the person taking an appeal to the Commission and/or a history of disruption of the Commission's administrative process in declining to schedule a future contested case hearing.

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:

MICHAEL WARD, #433227, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

CHIEF, POLICE DEPARTMENT, CITY OF STAMFORD; POLICE DEPARTMENT, CITY OF STAMFORD; AND CITY OF STAMFORD, c/o Attorney Burt Rosenberg, Asst. Corporation Counsel, 888 Washington Blvd., PO Box 10152, Stamford, CT 06904

Molly E. Steffes
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Acting Clerk of the Commission