

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Cordaryl Silva,

Complainant

against

Docket #FIC 2023-0652

Scott Todd, Chief, Police Department,  
City of Derby; Police Department, City of  
Derby; and City of Derby,

Respondents

November 20, 2024

The above-captioned matter was heard as a contested case on June 7, 2024 and July 30, 2024, at which times the respondents appeared but the complainant did not. A second continued hearing was held on October 24, 2024, at which time the complainant and respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Corrections. See Docket No. CV 03-0826293, Anthony Sinchak v. FOIC et al., Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.)

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 on December 3, 2023 the complainant requested<sup>1</sup> the following records from the respondents:
  - a. A “complete recording of dispatch and radio transmission communications [in connection with] the May 12, 2012 homicide investigation of Javon Zimmerman.”
  - b. “All documents that show when Detective Netto and Lt. Stanko clock[ed] in on May 12, 2012 to start investigating the Javon Zimmerman homicide.”

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<sup>1</sup> Hereinafter, the December 3 request.

- c. "All [data] taken off Cordaryl Silva[s] Verizon Wireless phone retrieved from 8 Burke Street in Ansonia."
- d. "All notes taken from Derby officers pertaining to [the] Javon Zimmerman homicide investigation."

3. It is found that upon receiving the complainant's December 3 request the respondents determined that all records responsive to the request were previously disclosed in response to several prior requests from the complainant.<sup>2</sup>

4. It is found that the respondents did not: (i) acknowledge their receipt of the complainant's December 3 request; nor (ii) take any action with the request, except for determining that the complainant "previously received all documents regarding the subject homicide investigation [i.e., the May 12, 2012 homicide investigation of Javon Zimmerman<sup>3</sup>]."

5. Moreover, it is found that although the respondents determined that all records responsive to the complainant's December 3 request were disclosed in connection with his prior records requests, such determination was never communicated to the complainant.

6. By letter of complaint received and filed on December 14, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his December 3 request. In his complaint, the complainant also requested "that civil penalties up to \$1,000 dollars be imposed against officials directly responsible for [such] violation."

7. 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.

8. 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

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<sup>2</sup> In compliance with the Hearing Officer's October 24, 2024 Order to Submit Additional Evidence, the respondents submitted an Affidavit of Sargent Joseph Massetti dated October 30, 2024. Such affidavit is marked as Respondents' Exhibit 4 (after-filed). Sargent Massetti's affidavit states "[u]pon receipt of [the December 3 request], while such was not acknowledged by the [r]espondent it was determined that [the complainant] had made requests for materials related to the same investigation set forth in his December 3, 2023 request in 2015, 2017, and on four occasions in 2018."

<sup>3</sup> Hereinafter, the Zimmerman homicide investigation.

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.

9. 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.”

10. It is concluded that the records described in paragraph 2, above, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. The respondents concede that they neither acknowledged the complainant’s December 3 request nor provided any responsive records in response to that request. Nevertheless, the respondents maintain that they have previously provided the complainant with all records related to the Zimmerman homicide investigation in response to his prior records requests described in paragraph 3, above.<sup>4</sup>

12. Moreover, Respondents’ Exhibit 4 (After-Filed) contains the following statements:

- a. “Following receipt of the December 3, 2023 request it was determined that the requested dispatch audio file was previously provided in its entirety, and that no other audio files of police communications regarding the subject matter exist in the possession of the Derby Police Department.”
- b. “[U]pon a diligent search, it has been determined that there are no records in the possession of the Derby Police Department regarding the clock in times of Detective Netto or Lt. Stanko, of any material or data taken off Silva’s Verizon wireless phone, or any notes of individual officers regarding [the Zimmerman homicide investigation].”

13. It is found that the records referenced in paragraph 12a., above, correspond to the portion of the December 3 request described in paragraph 2a., above.

14. With respect to the respondents’ assertion that they have previously disclosed records to the complainant (as indicated in paragraph 12a., above), case law makes clear that a public agency is not absolved of its obligations to provide responsive records simply because a requestor has previously requested and received the same records. See Mayor v. Freedom of Info. Comm’n, Docket No. CV010511803S, 2002 WL 523086 at \*4 (Conn. Super Ct., March 19, 2002) (“There is nothing in the Connecticut FOIA that bars repeating a request to a public agency. Indeed, a complainant may seek to start an appeal period over again by asking for a record again, or a complainant may have lost the document after the first request. The FOIA

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<sup>4</sup> In support of this claim, the respondents rely on Respondents’ Exhibits 1, 2 and 3 which consist of a series of correspondence from the respondents to the complainant confirming the disclosure (or re-disclosure) of various records in response to requests made by the complainant in 2015, 2017, and 2018. However, such exhibits do not, on their face, establish that those prior requests were co-extensive with the complainant’s December 3 request.

simply provides that “[a]ny person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record. . . .” Unless exempt, all records are public records, and “every person shall have the right to receive a copy of such records in accordance with the provisions of Section 1-212. . . . [T]he general rule under the [FOIA] is disclosure. . . .”) (citations omitted).

15. It is found, therefore, that the respondents’ provision of records to the complainant in connection with prior requests does not satisfy their obligation to provide the complainant with all responsive records in response to his December 3 request.

16. It is found that the records referenced in paragraph 12b., above, correspond to those portions of the December 3 request described in paragraphs 2b., 2c. and 2d., above.

17. It is found that although the statement cited in paragraph 12b., above, indicates that the respondents conducted a “diligent search” for such records, such statement: (i) is conclusory and (ii) is not supported by the evidence in the administrative record.

18. For instance, the respondents provided no evidence concerning: (i) the *scope* of the search (i.e., evidence concerning the manner in which the search was conducted) and (ii) the *sufficiency* of the search (i.e., evidence that the scope of the search was reasonable in light of how such records are maintained by the respondents.)

19. Moreover, it is found that the respondents did not conduct any search for records in response to the complainant’s December 3 request until *after* the undersigned Hearing Officer issued the October 24, 2024 Order to Submit Additional Evidence.

20. It is found, therefore, that the respondents did not provide any responsive records to the complainant in response to his December 3 request.

21. Accordingly, it is concluded that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

### **Civil Penalty**

22. As noted in paragraph 6, above, the complainant requested that the Commission impose a civil penalty on the respondents.<sup>5</sup>

23. Section 1-206(b)(2), G.S., provides, in relevant part:

upon a 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

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<sup>5</sup> The Commission notes that the respondents had sufficient notice regarding the potential imposition of civil penalties. The complainant’s December 14 complaint specifically sought civil penalties. A copy of the complaint was sent to the respondents on May 20, 2024, as part of the Commission’s Notice of In-Person Hearing and Order to Show Cause. Moreover, the Notice of In-Person Hearing and Order to Show Cause indicated that the “[t]he complainant may seek the imposition of the civil penalty permitted under §1-206(b), G.S. See Notice of In-Person Hearing and Order to Show Cause ¶7.”

for the denial has been given an opportunity to be heard at the 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 five thousand dollars.<sup>6</sup>

24. As found in paragraphs 3 through 5, above, the respondents: (i) received the complainant's December 3 request; (ii) determined that the records requested therein were previously disclosed to the complainant in connection with his prior requests; and (iii) took no other action on the request.

25. Moreover, it is found that the respondents did not make any attempt to contact the complainant between receiving his December 3 request and the filing of his December 14 complaint. Specifically, the respondents made no attempt to verify whether he was seeking the same records that had previously been disclosed, and if so, whether their prior responses would sufficiently respond to his December 3 request.

26. It is found that the respondents disregarded the complainant's December 3 request after having unilaterally determined that their past responses to the complainant's prior requests were sufficient.

27. As noted in paragraph 14, above, case law makes clear that the complainant has the right to request records he previously received from the respondents. By disregarding the complainant's December 3 request, the respondents acted in a manner contrary to both the letter and spirit of the FOI Act.

28. It is found, therefore, that simply disregarding the complainant's December 3 request completely was not reasonable.

29. It is found that the respondents have previously been found in violation of the FOI Act in a similar manner. See Docket #FIC 2020-0421, Salvatore Coppola v. Chief, Police Department, City of Derby et al. (January 25, 2023), ¶12 ("It is found that, other than their acknowledgement letter dated August 11, 2020 . . . the respondents never followed up or communicated with the complainant, in any manner. It is further found that the respondents failed to provide the complainant with any records responsive to his request. . . .")

30. It is concluded, based on the facts and circumstances of this case, that the complainant's right to prompt access to non-exempt responsive records was denied by the respondents "without reasonable grounds" within the meaning of §1-206(b)(2), G.S., and that the imposition of a civil penalty is warranted.

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<sup>6</sup> The Commission notes that, pursuant to Public Act 23-200, §1-206(b)(2), G.S., was amended to increase the maximum civil penalty authorized under the FOI Act from \$1,000 to \$5,000.

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

1. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall: (i) conduct a thorough and diligent search for the records requested by the complainant in his December 3 request described in paragraph 2 of the findings, above; and (ii) provide an affidavit to the complainant and the Commission prepared by someone with knowledge of the respondents' records and the search performed detailing the nature and scope of the search. If, after a thorough and diligent search, the respondents are unable to locate such records, or any portions thereof, the respondents shall so state in the affidavit. If the respondents are able to locate any records responsive to the complainant's December 3 request, the respondents shall so state in the affidavit and provide a copy of such records to the complainant, free of charge.

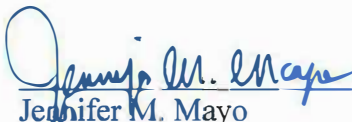
2. In complying with paragraph 1 of the order above, the respondents may redact only those portions of the responsive records, if any, that are mandatorily exempt from disclosure. No redactions may be made to those portions of any records responsive to the complainant's December 3 request that are permissively exempt from disclosure. If, pursuant to this order, the respondents withhold any record that is subject to a mandatory exemption, they shall submit an affidavit to the Commission (with copy to the complainant) sworn to or attested by a person with the requisite knowledge, and detailing the types of records withheld and the statutory basis for withholding such records.

3. Within fourteen (14) days of the date of the Notice of Final Decision in this matter, the respondents shall contact the Commission's public education officer to schedule training regarding the requirements of the FOI Act.

4. The respondent Scott Todd, as the official directly responsible for the denial herein, shall remit to the Commission, within thirty (30) days of the Notice of Final Decision in this matter, a civil penalty in the amount of two hundred and fifty dollars.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of November 20, 2024.

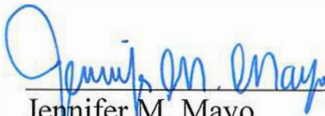
  
Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**CORDARYL SILVA, #332230**, Cheshire Correctional Institution, 900 Highland Avenue,  
Cheshire, CT 06410

**SCOTT TODD, CHIEF, POLICE DEPARTMENT, CITY OF DERBY; POLICE  
DEPARTMENT, CITY OF DERBY; AND CITY OF DERBY**, c/o Attorney Bryan L. LeClerc,  
Berchem Moses PC, 75 Broad Street, Milford, CT 06460



Jennifer M. Mayo  
Acting Clerk of the Commission