

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Cordaryl Silva,

Complainant

against

Docket # FIC 2023-0140

James C. Rovella, Commissioner, State of  
Connecticut, Department of Emergency  
Services and Public Protection; and State of  
Connecticut, Department of Emergency  
Services and Public Protection,

Respondents

February 28, 2024

The above-captioned matter was heard as a contested case on November 29, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, 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 Correction. See Docket No. CV03-0826293, *Anthony Sinchak v. FOI Commission*, 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, by letter dated March 15, 2023, the complainant requested that the respondents provide him with copies of the following records:
  - (a) All reports written by Fran Budwitz for the 2012 homicide investigation of Javon Zimmerman; and
  - (b) All radio transmission and dispatch communications connected to the May 12, 2012 homicide investigation of Javon Zimmerman.
3. By letter of complaint filed March 31, 2023, 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. The complainant further requested that the Commission impose a civil penalty against the respondents.

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

“Public 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.

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

Except 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 (1) inspect such records promptly during regular office or business hours ... or (3) receive a copy of such records in accordance with the provisions of section 1-212.

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

7. It is concluded that the requested records, to the extent such records exist and are maintained by the respondents, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

8. It is found that on November 16, 2023, the respondents sent 13 pages of records responsive to the request described in paragraph 2(a), above, to the FOI Administrator for the Department of Correction (“DOC”), in accordance with §1-210(c), G.S.<sup>1</sup> It is further found that, sometime thereafter, DOC provided such records to the complainant.

---

<sup>1</sup> Section 1-210(c), G.S., provides in relevant part:

Whenever a public agency receives a request from any person confined in a correctional institution ... for disclosure of any public record under the [FOI] Act, the public agency shall promptly notify the Commissioner of Correction ... of such request, in the manner prescribed by the commissioner, before complying with the request as required by the [FOI] Act. If the commissioner believes the requested record is exempt from disclosure pursuant to [§1-210(b)(18), G.S.], the commissioner may withhold such record from such person when the record is delivered to the person's correctional institution or facility ....

9. At the hearing in this matter, the complainant acknowledged that he received the records described in paragraph 8, above. However, the complainant claimed that the respondents should have maintained audio recordings of radio transmissions between the Connecticut State Police and the Derby Police Department responsive to the request described in paragraph 2(b), above.

10. The respondents presented the testimony of their paralegal specialist who conducted the search for records responsive to the complainant's request. Based on the credible testimony presented at the hearing, it is found that the respondents reviewed the entire case file relating to the investigation in question on two separate occasions, and that no audio recordings of radio transmissions were maintained in such file. It is further found that the respondents requested that Troop I and the Central District Major Crimes Unit ("Central District"), which were involved in the investigation in question, search for any responsive audio recordings. It is found that Troop I and Central District did not locate any such recordings. It is also found that the respondents' case management system reflected that no such audio recordings were logged as evidence in connection with the investigation in question.

11. With respect to the complainant's claim that the respondents violated the FOI Act by failing to maintain the requested audio recordings, it is well settled that the 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, e.g., *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).

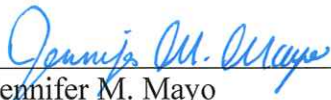
12. Based on the foregoing, it is found that the respondents provided the complainant with all records responsive to his request. It is therefore concluded that the respondents did not violate the FOI Act as alleged by the complainant.

13. Because the respondents did not violate the FOI Act as alleged by the complainant, the Commission declines to impose a civil penalty against the respondents.

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 February 28, 2024.

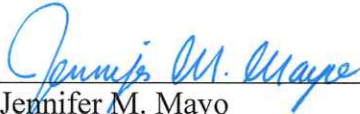
  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission

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

**JAMES C. ROVELLA, 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 Cynthia Isales, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown, CT 06457

  
\_\_\_\_\_  
Jennifer M. Mayo  
Acting Clerk of the Commission