

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Daniel Drainville and The Day,

Complainants

against

Docket # FIC 2023-0392

Chief, Police Department, Town of
Montville; Police Department, Town of
Montville; and Town of Montville,

Respondents

July 24, 2024

The above-captioned matter was heard as a contested case on March 19, 2024, at which time the complainants 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 email dated July 27, 2023, the complainants requested that the respondents provide them with a copy of the following records:

Body camera and video surveillance, including audio, of the July 24 [2023], 9 a.m. incident involving the discharge of an officer's firearm inside the police station lobby...[the] body camera surveillance video and audio [is] from the time Zachary Barbarossa ("Barbarossa") enters the lobby, up to and including when officers and Barbarossa exit the lobby at the conclusion of the incident.
3. It is found that on July 28, 2023, the respondents acknowledged the complainants' request.
4. By letter of complaint filed August 7, 2023, the complainants appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying the request described in paragraph 2, above.
5. 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.

6. 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.

7. 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.”

8. 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.

9. At the hearing, the complainants contended that the respondents violated the FOI Act by failing to provide them with the records described in paragraph 2, above. The respondents disputed this contention, arguing that the State’s Attorney for the Judicial District of New London objected to disclosure of such records, and therefore the respondents were precluded from complying with the complainants’ request. It is also found that the respondents did not contend that the records described in paragraph 2, above, were exempt from disclosure pursuant to any other claim of exemption.

10. It is found that on July 24, 2023, Barbarossa was arrested at the Montville Police Department and charged with Attempt to Commit Possession of a Controlled Substance, Interfering with a Police Officer, and Criminal Mischief in the third degree.¹

11. It is found that the records described in paragraph 2, above, relate to the arrest of Barbarossa, and that, at all relevant times, the criminal prosecution related to such arrest was pending.

12. It is found that, by letter dated November 27, 2023, Attorney Paul J. Narducci, Office of the State’s Attorney, Judicial District of New London, requested that the respondents not disclose the records described in paragraph 2, above, “until the case has been concluded” because the “footage is highly material to the state’s prosecution of the case and the release of

¹ The Commission notes that, during the course of events described in paragraph 10, above, the firearm of one of the responding officers spontaneously discharged. As part of the investigation of such spontaneous discharge, the respondents made that portion of the video available to the public and provided a copy to the complainants.

such footage at this time would be highly prejudicial to the prosecution of this matter.” It is found that such letter asserts that the records described in paragraph 2, above, are exempt from disclosure pursuant to §§1-215(a)(2)(B) and 1-210(b)(3)(D), G.S.

13. Section 1-215, G.S., provides, in relevant part, as follows:

(a) For the purposes of this section, "record of the arrest" means

(1) the name, race and address of the person arrested, the date, time and place of the arrest and the offense for which the person was arrested, and

(2) in addition, in a case in which (A) the arrest has been by warrant, the arrest warrant application, including any affidavit in support of such warrant, or (B) the arrest has been made without a warrant, the official arrest, incident or similar report, provided if a judicial authority has ordered any such affidavit or report sealed from public inspection or disclosure, in whole or in part, the portion of the affidavit or report that has not been sealed, if applicable, as well as a report setting forth a summary of the circumstances that led to the arrest of the person in a manner that does not violate such order. "Record of the arrest" does not include any record of arrest of a juvenile, a record erased pursuant to chapter 961a or any investigative file of a law enforcement agency compiled in connection with the investigation of a crime resulting in an arrest.

(b) Notwithstanding any provision of the general statutes, and except as otherwise provided in this section, any record of the arrest of any person shall be a public record from the time of such arrest and shall be disclosed in accordance with the provisions of section 1-212 and subsection (a) of section 1-210. No law enforcement agency shall redact any record of the arrest of any person, except for (1) the identity of witnesses, (2) the name, address or other identifying information of any victim of sexual assault under section 53a-70, 53a-70a, 53a-71, 53a-72a, 53a-72b or 53a-73a, voyeurism under section 53a-189a, injury or risk of injury, or impairing of morals under section 53-21 or family violence, as defined in section 46b-38a, or of an attempt thereof, (3) specific information about the commission of a crime, the disclosure of which the law enforcement agency reasonably believes may prejudice a pending prosecution or a prospective law enforcement action, or (4) any information that a judicial authority has ordered to be sealed from public inspection or disclosure. Any personal possessions or effects found on a person at the time of such person's arrest shall not be disclosed unless such possessions or effects are relevant to the crime for which such person was

arrested.

(c) *In addition, any other public record of a law enforcement agency that documents or depicts the arrest or custody of a person during the period in which the prosecution of such person is pending shall be disclosed in accordance with the provisions of subsection (a) of section 1-210 and section 1-212, unless such record is subject to any applicable exemption from disclosure contained in any provision of the general statutes.*

(d) Any law enforcement agency receiving a request for a record described in subsection (c) of this section shall promptly provide written notice of such request to the office of the state's attorney for the appropriate judicial district where the arrest occurred. The state's attorney for such district shall be afforded the opportunity to intervene in any proceeding before the Freedom of Information Commission concerning such request.

(e) The provisions of this section shall only be applicable to any record described in this section during the period in which a prosecution is pending against the person who is the subject of such record.... (Emphasis added.)

14. Section 1-215, G.S., exclusively governs law enforcement agencies' disclosure obligations under the FOI Act while a criminal prosecution is pending. In *Commissioner of Public Safety v. FOI Commission, et al.*, 312 Conn. 513 (July 15, 2014) ("*Public Safety*"), the Supreme Court interpreted §1-215, G.S., and ruled that during the pendency of a criminal prosecution, a law enforcement agency must disclose no more than basic police blotter information and one other piece of information, designated by the law enforcement agency: either a press release, the arrest or incident report, or other similar report of the arrest of a person. In response to *Public Safety*, the General Assembly enacted Public Act 15-164, *An Act Concerning the Disclosure of Arrest Records During a Pending Prosecution under the Freedom of Information Act*, which amended §1-215, G.S., by increasing law enforcement agencies' disclosure obligations under §1-215, G.S.

15. At the hearing, the respondents' witness testified, and it is so found, that portions of the records described in paragraph 2, above, document or depict the arrest and custody of Barbarossa. Accordingly, the respondents were required to disclose to the complainants the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa, within the meaning of §1-215(c), G.S., unless such records are exempt from disclosure. As already explained in paragraph 12, above, the Office of the State's Attorney objected to the respondents' disclosure of copies of the requested records pursuant to §§1-215(a)(2)(B) and 1-210(b)(3)(D), G.S.

16. With regard to the contention that the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa are exempt from disclosure pursuant to §1-215(a)(2)(B), G.S., such provision provides that the "record of arrest"

includes “the official arrest, incident or similar report,” and sets forth the circumstances in which such record, or portions thereof, may be withheld from disclosure. It is found, however, that the complainants in this matter requested copies of audio and video footage, as described in paragraph 2, above, and did not request a copy of the “record of arrest,” within the meaning §1-215(a)(2)(B), G.S.

17. Therefore, it is found that §1-215(a)(2)(B), G.S, is not a basis to withhold the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa, and the respondents improperly withheld the requested records pursuant to such provision.

18. With regard to the contention that the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S., such section provides in relevant part, that disclosure is not required 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 ... information to be used in a prospective law enforcement action if prejudicial to such action.

19. It is found that the requested records are law enforcement agency records that are not otherwise available to the public, and that such records were compiled in connection with the detection or investigation of crime. It is further found that although the Office of the State’s Attorney was aware of the complainants’ request and that this matter was pending before the FOI Commission, it did not move to intervene in this matter pursuant to §§1-215(c) and (d), G.S., and did not adduce evidence in support of its contention that disclosure of the portion of the records described in paragraph 2, above, that depict the arrest and custody of Barbarossa, would be prejudicial to a prospective law enforcement action.

20. As already found in paragraph 9, above, the respondents did not assert that the records described in paragraph 2, above, were exempt from disclosure pursuant to any other claim of exemption beyond the objections of the Office of the State’s Attorney.

21. It is therefore found that the respondents failed to prove that the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa, are exempt from disclosure pursuant to §1-210(b)(3)(D), G.S.

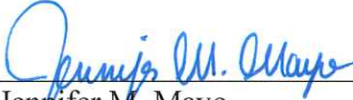
22. Accordingly, it is concluded that the respondents violated §§1-210(a), 1-212(a), and 1-215(c), G.S., by denying the complainants' request for the portions of the records described in paragraph 2, above, that document or depict Barbarossa's arrest and custody.²

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

1. Within thirty (30) days of the date of the Notice of Final Decision in this matter, the respondents shall provide to the complainants a copy of the portions of the records described in paragraph 2, above, that document or depict the arrest and custody of Barbarossa, within the meaning of §1-215(c), G.S.

2. Henceforth, the respondents shall strictly comply with §§1-210(a), 1-212(a), and 1-215(c), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of July 24, 2024.



Jennifer M. Mayo
Acting Clerk of the Commission

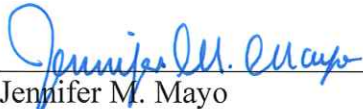
² At the hearing, the complainants contended that the records described in paragraph 2, above, are subject to mandatory disclosure pursuant to §§29-6d(f) and 29-6d(g), G.S. Section 29-6d, G.S., governs the use of body-worn recording equipment and dashboard cameras. Section 29-6d(f), G.S., addresses an officer's right to review body-worn camera or dashboard camera footage prior to disclosure. Section §29-6d(g), G.S., pertains to instances in which no officer should use body-worn recording or dashboard camera equipment, and when certain recordings shall not be disclosed. Neither provision cited by the complainants is applicable to the facts and circumstances presented in this case. Therefore, such provisions are not considered further herein.

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:

DANIEL DRAINVILLE AND THE DAY, 47 Eugene O'Neill Drive, New London, CT 06320

CHIEF, POLICE DEPARTMENT, TOWN OF MONTVILLE; POLICE DEPARTMENT, TOWN OF MONTVILLE; AND TOWN OF MONTVILLE, c/o Attorney Duncan J. Forsyth, Halloran & Sage, LLP, 225 Asylum Street, Hartford, CT 06103 and Attorney Michael C. Collins, Halloran & Sage LLP, 225 Asylum Street, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission