

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

C.J. Mozzochi, Ph.D.,

Complainant

against

Docket #FIC 2023-0383

Marshall Porter, Chief, Police Department,  
Town of Glastonbury; Police Department,  
Town of Glastonbury; and Town of  
Glastonbury,

Respondents

June 26, 2024

The above-captioned matter was heard as a contested case on December 21, 2023 and April 26, 2024, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

After the December 21, 2023 contested case hearing, by order of the hearing officer, the respondents submitted an after-filed exhibit, which has been admitted into evidence, over the objection of the complainant, and marked as follows: Respondents' Exhibit 1 (after-filed): Affidavit of Officer Kevin Szydlo, signed December 27, 2023.

Due to the objection of the complainant, by order of the hearing officer, dated March 25, 2024, the above-captioned matter was reopened for a continued hearing to allow for testimony and cross-examination of the respondents' witness, Officer Szydlo. Such reopened hearing was held on April 26, 2024.

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 or around January 20, 2023 and January 24, 2023, the complainant called the respondent police department during normal business hours and made oral requests, discussed more thoroughly in paragraphs 16-18, below, for copies of certain body camera ("body cam") videos.
3. It is found that, by letter dated June 5, 2023, the complainant requested copies of the following records, among others no longer at issue:

- (a) [t]he body cam video of Officer Ian Maloney on January 12, 2023 when he interviewed ... Kathy Denisiewicz vis-à-vis CFS No 2300000923”; and
- (b) [t]he body cam video of Officer Kenneth Lee on March 11, 2023 when he interviewed me vis-à-vis CFS No 220006283.”

4. It is found that, by letter dated July 7, 2023, the complainant again requested a copy of “[t]he body cam video of Officer Kenneth Lee on March 11, 2023 when he interviewed me vis-à-vis CFS No 220006283.”

5. It is found that, by letter dated August 24, 2023, the complainant again requested a copy of the body cam video of Officer Ian Maloney’s interview with Ms. Denisiewicz on January 12, 2023.

6. By letter of complaint, dated and filed July 26, 2023, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records, described in paragraphs 3(b) and 4, above. The complainant also requested the imposition of a civil penalty against the respondents.

7. By supplemental complaint, dated and filed September 18, 2023, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by failing to provide the records, described in paragraphs 3(a) and 5, above. The complainant again requested the imposition of a civil penalty against the respondents.

8. 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 1-218, whether such data or information be handwritten, typed, tape-recorded, videotaped, printed, photostated, photographed or recorded by any other method.

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

[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.

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

11. It is concluded that the requested records, 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.

12. With regard to the request described in paragraphs 3(b) and 4, above, the respondent police chief (“Chief Porter”) testified, and it is found, that the respondent police department purged the requested body cam video on or around June 9, 2023, in accordance with their 90-day retention policy.<sup>1</sup> Chief Porter admitted that such body cam video was accidentally purged four days subsequent to the complainant’s June 5, 2023 request, described in paragraph 3(b), above. Chief Porter also testified, and it is found, that he became aware that such body cam video was purged a few days after its destruction. Chief Porter further testified, and it is found, that, upon learning of the responsive body cam video’s destruction, he took corrective policy and procedural action to ensure that body cam video subject to a pending FOI request would not be purged in the future.

13. The respondents conceded, and it is concluded, that they violated §§1-210(a) and 1-212(a), G.S., by failing to provide the body cam video described in paragraphs 3(b) and 4, above.

14. With regard to the request described in paragraphs 3(a) and 5, above, Chief Porter testified that the respondent police department purged the responsive body cam video, in accordance with the department’s 90-day retention policy, prior to receipt of the complainant’s August 24, 2023 request.

15. At the hearings on this matter, the complainant and the respondents offered conflicting testimony regarding the complainant’s oral requests for records made on or around January 20, 2023 and January 24, 2023, described in paragraph 2, above.

16. The complainant credibly testified that, in January of 2023, he orally requested copies of body cam videos of Officer Maloney’s January 12, 2023 interviews with him and copies of the body cam videos described in paragraphs 3(a) and 5, above, which would include copies of Officer Maloney’s January 12, 2023 interview with Ms. Denisiewicz.

17. The respondents’ witness, Officer Szydlo, however, first attested, and then credibly testified during the April 26, 2024 reopened hearing, that, on or around January 20, 2023, the complainant orally requested a copy of the body cam video of the initial January 12, 2023 interview between Officer Maloney and the complainant, and that, on or around January 24, 2023, the complainant orally requested a copy of the body cam video of the second January 12,

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<sup>1</sup> At the December 21, 2023 contested case hearing, the complainant also requested an order related to the respondents’ 90-day retention policy. The Commission notes that jurisdiction over the retention and destruction of public records rests with the State’s Public Records Administrator, and, therefore, such request will not be further addressed, herein. See *Dept. of Public Safety v. Freedom of Information Commission*, 103 Conn. App. 571, 577 (2007) (the Commission is a creature of statute with limited jurisdiction; it can only administer and enforce the provisions set forth in the FOI Act).

2023 interview between Officer Maloney and the complainant. Officer Szydlo also testified, and it is found, that he has successfully processed and satisfied numerous FOI requests from the complainant in the past. Officer Szydlo further testified that, in processing those prior FOI requests, the respondents disclosed responsive records to the complainant without issue.

18. It is found that, during the December 21, 2023 contested case hearing, prior to the submission of Respondents' Exhibit 1 or the testimony of Officer Szydlo, described in paragraph 17, above, the complainant testified that he considered Officer Szydlo to be cooperative in the past. It is also found that, at the April 26, 2024 reopened hearing, the complainant testified that Officer Szydlo had previously assisted him with his prior FOI requests without issue.

19. It is found that, based upon the evidence and testimony described in paragraphs 17 and 18, above, Officer Szydlo understood the complainant's oral requests on or around January 20, 2023 and January 24, 2023, to be requests for copies of body cam videos of the January 12, 2023 interviews between Officer Maloney and the complainant only and not of the interview with Ms. Danisiewicz. It is also found that such video was, therefore, not retained by the respondents and was purged in accordance with the department's ordinary 90-day schedule.

20. Consequently, it is found that, at the time of the complainant's requests for copies of the body cam videos of Officer Maloney's interview with Ms. Danisiewicz, described in paragraphs 3(a) and 5, above, in June and August of 2023, respectively, the respondents did not maintain responsive records.

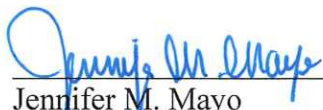
21. It is therefore concluded that the respondents did not violate the FOI Act by not disclosing the requested body cam video described in paragraphs 3(a) and 5, above, to the complainant.

22. After consideration of the entire record, the Commission in its discretion declines to consider the imposition of 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. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of June 26, 2024.

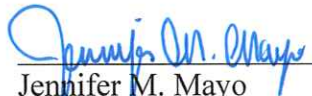
  
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Jennifer M. Mayo  
Acting Clerk of the Commission

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:

**C.J. MOZZOCHI, PH.D**, Box 775, Glastonbury, CT 06033

**MARSHALL PORTER, CHIEF, POLICE DEPARTMENT, TOWN OF GLASTONBURY; POLICE DEPARTMENT, TOWN OF GLASTONBURY; AND TOWN OF GLASTONBURY**, c/o Attorney Michael C. Collins, Halloran & Sage LLP, 225 Asylum Street, Hartford, CT 06103

  
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Jennifer M. Mayo  
Acting Clerk of the Commission