

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Jermaine Rogers,

Complainant

against

Docket # FIC 2023-0263

Office of the City Attorney, City of
Bridgeport; and City of Bridgeport,

Respondents

May 22, 2024

The above-captioned matter was heard as a contested case on October 18, 2023, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits, and argument on the complaint.

A Report of Hearing Officer was issued on April 26, 2024. At its regular meeting of May 8, 2024, the Commission considered, but did not vote on, such Report. After discussion, the Commission voted 7-0 to remand the matter back to the hearing officer for consideration of a revised report in accordance with such discussion.

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 filed on May 25, 2023, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to comply with the order (“Order”) in the Commission’s Final Decision (“Final Decision”) in Docket #FIC 2022-0169, *Jermaine Rogers v. Officer of the City Attorney, City of Bridgeport; and City of Bridgeport* (“FIC 2022-0169”).
3. The Commission takes administrative notice of the record in FIC 2022-0169.
4. In FIC 2022-0169, on March 16, 2022, the complainant requested that the respondents provide him with copies of the following records:

[a]ny and all records pursuant to the incident that occur[red] on 3-17-2020 resulting in the civilian complain[t] or a case number 201-030 that is now complete[.] [P]lease provide all records to include but not limited to any video and audio recordings, body cam footage, dashboard

footage, administrative reports, officer reports, incident reports, etc.¹

5. It is found that the incident that was the subject of the request described in paragraph 4, above, (“Incident”) was a traffic stop effectuated by the Bridgeport Police Department (“Department”). It is found that the complainant was the driver of the car, and that four Department police officers were involved in the Incident.

6. It is found that in FIC 2022-0169, as relevant here, the respondents provided the complainant with four body worn camera (“BWC”) videos from the Incident. It is found that such videos contained both visual and audio redactions.

7. It is found that in FIC 2022-0169, as relevant here, the complainant challenged the audio redactions to the BWC videos described in paragraph 6, above.

8. It is found that in FIC 2022-0169, the respondents claimed that the audio redacted from the BWC videos at issue consisted of radio transmissions from the dispatch center that were overheard on the responding officers’ BWCs. The respondents further claimed that the redactions were proper because they consisted of “(i) communications that [were] unrelated and non-responsive to the request, (ii) communications and transmissions exempt from disclosure pursuant to §1-210(b)(3)(E), [G.S.,] and (iii) communications exempt from disclosure pursuant to §29-164f, G.S.”

9. It is found that in FIC 2022-0169, the hearing officer did not order the respondents to submit the BWC videos at issue for in camera inspection and, therefore, that the findings of fact and conclusions of law with respect to the audio redactions were based solely on the testimony presented by the parties.

10. It is found that on March 22, 2023, the Commission issued the Final Decision in FIC 2022-0169.

11. In the Final Decision, the Commission concluded that the respondents properly redacted radio transmissions that contained information from the National Crime Information Center (“NCIC”) pursuant to §29-164f, G.S.,² and, therefore, that the respondents did not violate the FOI Act by redacting such radio transmissions.

¹ In FIC 2022-0169, in addition to the request described in paragraph 4, above, the complaint also alleged that the respondents failed to comply with requests dated June 21, 2021 and August 23, 2021. However, the Commission concluded that it lacked jurisdiction to address such claims because the complainant did not appeal within 30 days of the denial of such requests. See §1-206(b)(1), G.S. Thus, the Final Decision only addressed the merits of the March 16, 2022 request.

² The NCIC is “a computerized database of criminal history information that is accessible to the [D]epartment through the National Crime Prevention and Privacy Compact” (“Compact”). *Commissioner of Public Safety v. FOI Commission*, 144 Conn. App. 821, 824 (2013). Section 29-164f, G.S., is the mechanism by which the General Assembly entered into the Compact, which “provides that the NCIC database is to be used for limited purposes authorized by law, such as background checks, and that NCIC records may only be used for official purposes.” *Id.* at 827.

12. In the Final Decision, the Commission further concluded that the respondents failed to prove the applicability of §1-210(b)(3)(E), G.S., to the records in question and, therefore, that they violated the FOI Act by redacting radio transmissions based on such exemption.

13. With respect to the respondents' claim in FIC 2022-0169 that certain audio was redacted because it was "unrelated to and non-responsive to the request," the respondents testified that such audio consisted of radio transmissions from the dispatch center "related to unrelated calls or complaints," which were overheard on the responding officers' BWCs. In their post-hearing brief in FIC 2022-0169, the respondents claimed that "such portions are wholly nonresponsive to the Complainant's requests, which are seeking materials pertaining to 'the incident that occur [sic] on 3-17-2020 resulting in the civilian complaint or a case number 201-030 [sic].'"

14. In the Final Decision, the Commission found, based on the testimony and arguments presented by the respondents, that the radio transmissions described in paragraph 13, above, were "wholly unrelated and non-responsive to the complainant's request." The Commission therefore concluded that the respondents did not violate the FOI Act by redacting such radio transmissions.

15. It is found that in paragraph 1 of the Order in FIC 2022-0169, the Commission ordered the respondents to provide the complainant with copies of the BWC videos at issue, removing the redactions that were improperly made based on §1-210(b)(3)(E), G.S.³

16. It is found that on or around April 27, 2023, the respondents provided the complainant with new copies of the BWC videos with certain audio redactions removed.

17. At the hearing in this matter, the complainant claimed that the respondents did not comply with the Order because the copy of the videos he received still contained most of the same redactions as the version he was provided prior to FIC 2022-0169. The complainant acknowledged that the Order did not require the respondents to provide him with a completely unredacted copy of the BWC videos, but maintained that the respondents continued to improperly redact audio of the conversations that were occurring at the scene of the Incident, rather than just the exempt or non-responsive radio transmissions that were contemplated by the Final Decision.

18. The respondents claimed that the copy of the BWC videos they provided to the complainant contained the radio transmissions that previously were redacted pursuant to §1-210(b)(3)(E), G.S., as required by the Order (i.e., that the respondents did not redact any of the radio transmissions that the Commission had ordered disclosed). The respondents further claimed that all of the audio that was redacted contained radio transmissions of either unrelated

³ Paragraph 1 of the Order required the respondents to "provide to the complainant an unredacted copy of the records identified in paragraph 41, above, free of charge..." Paragraph 41, in turn, described the radio transmissions on the BWC footage that the respondents claimed were exempt from disclosure pursuant to §1-210(b)(3)(E), G.S. Thus, while the Order provided that the respondents were required to provide "an *unredacted* copy of the records identified in paragraph 41," read in context of the findings and conclusions, the Order required the respondents to provide the complainant with a copy of the BWC videos they previously provided to him, with any redactions based on §1-210(b)(3)(E), G.S., removed. Because the Commission concluded that the respondents did not improperly redact the radio transmissions they claimed were either non-responsive or exempt pursuant to §29-164f, G.S., the Order did not require the respondents to remove such redactions.

calls for service, or information that was exempt pursuant to §29-164f, G.S., which the Final Decision concluded were properly redacted.

19. On November 15, 2023, pursuant to an order of the hearing officer, the respondents submitted for in camera inspection an unredacted copy of the BWC videos that the respondents provided to the complainant in accordance with the Order in FIC 2022-169 (“In Camera Records”). In addition, on April 16, 2024, pursuant to an order of the hearing officer, the respondents submitted a copy of such videos that contained the same redactions as the copy provided to the complainant. The redacted copy has been marked as Respondents’ Exhibit C (after-filed).

20. Based on a careful inspection of the In Camera Records and Exhibit C, it is found that the BWC videos provided to the complainant following the Final Decision did not redact any radio transmissions based on §1-210(b)(3)(E), G.S. It is further found that all of the audio that was redacted contained either radio transmissions that, on their face, appeared to contain information that may have been obtained from the NCIC, which would be exempt from disclosure pursuant to §29-164f, G.S., or radio transmissions of unrelated calls for service. It is therefore found that the respondents complied with the Order in FIC 2022-0169.

21. The Commission notes, however, that at the hearing in this matter, the respondents acknowledged, for the first time, that when conversations or other sounds from the scene of the Incident overlapped with the radio transmissions of unrelated calls for service, they redacted all audio from such portions of the videos. The respondents testified that because the software they use to make redactions does not allow them to isolate and remove individual audio sources, the only way to redact the radio transmissions of unrelated calls was to redact all audio from such portions of the videos. In other words, when radio transmissions from unrelated calls for service could be overheard on the BWC videos, the respondents redacted all audio from such portions of the videos, even if doing so meant redacting non-exempt audio that was relevant to the Incident and clearly responsive to the complainant’s request.

22. Section 1-210(a), G.S., provides that “[e]xcept as otherwise provided by any federal law or state statute, *all* records maintained or kept on file by any public agency ... *shall be public records* and every person shall have the right to ... receive a copy of such records in accordance with [§1-212, G.S.]” (Emphasis added.) With respect to electronic records, §1-211(a), G.S., provides that “[a]ny public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the [FOI] Act, a copy of *any nonexempt data* contained in such records ... if the agency can reasonably make any such copy or have any such copy made.” (Emphasis added.)

23. Nothing in the FOI Act allows an agency to withhold responsive, non-exempt public records based on an assertion that such records also contain information that is non-responsive to a request. While the Commission has, on several occasions, concluded that agencies were not required to disclose portions of records that were not responsive to a request, the Commission has never permitted an agency to redact non-exempt, *responsive* data from records merely because it overlapped with other data that was non-responsive. Allowing such redactions would be akin to permitting an agency to redact an entire photograph merely because a person unrelated to the incident happens to appear in the distant background. There is nothing in the FOI Act that

allows an agency to withhold public records (or portions thereof) on such a basis, and the Commission has never suggested otherwise.

24. Nevertheless, because the Order in FIC 2022-0169 only required the respondents to remove the redactions that had been made based on §1-210(b)(3)(E), G.S., the Commission is constrained to conclude that the respondents did not violate the Order.

25. However, for the reasons described in paragraphs 21 through 23, above, the Commission strongly urges the respondents to provide the complainant with a copy of the BWC videos that includes the portions of the audio identified on the in camera index as “Unrelated Calls for Service, Outside Scope of Request.” Alternatively, if the respondents refuse to provide the complainant with such records, the complainant may make a new request to the respondents for the BWC videos, and then file another complaint with the Commission based on the respondents’ refusal to comply with the complainant’s request.

26. Recognizing that the lack of an in camera inspection in FIC 2022-0169 contributed to an unnecessary delay to the complainant’s right to receive the records he requested, in the event that the complainant is forced to file another complaint, the Commission will make every effort to expedite the matter for a hearing.

27. The Commission takes this opportunity to make clear that, as noted previously, there is no basis in the FOI Act to withhold responsive, non-exempt data from public records based solely on the fact that it overlaps with other data that is unrelated or tangential to the request. In future cases, the Commission may rely on this decision in considering whether similar redactions constitute a denial “without reasonable grounds” within the meaning of §1-206(b)(2), G.S.

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 May 22, 2024.



Molly E. Steffes
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:

JERMAINE ROGERS, 1188 Main Street, Apt. 222, Bridgeport, CT 06604

OFFICE OF THE CITY ATTORNEY, CITY OF BRIDGEPORT; AND CITY OF BRIDGEPORT, c/o Attorney Dina A. Scalo, Office of the City Attorney, 999 Broad Street, 2nd Floor, Bridgeport, CT 06604 and Attorney Richard G. Kascak, Office of the City Attorney, 999 Broad Street, Bridgeport, CT 06604


Molly E. Steffes
Acting Clerk of the Commission