

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Joao Campos,

Complainant

against

Docket #FIC 2023-0564

Keith White, Chief, Police Department,
Town of Monroe; Police Department,
Town of Monroe; and Town of Monroe,

Respondents

October 23, 2024

The above-captioned matter was heard as a contested case on May 6, 2024, and October 4, 2024, at which times the complainant and respondents appeared, presented testimony, evidence, 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 on August 16, 2023, the complainant submitted three requests¹ to the respondents seeking to inspect and/or obtain copies of:
 - a. “[r]ecords for incident reported between August 2022 through September 2022 for incident report of towing a 1998 S70 Volvo that belonged to Joao Campos with personal belongings inside the car to [6]5² Blanket Meadow Rd in Monroe and then towed back to 16 mon-tar dr in Monroe;”
 - b. “[r]ecords for incident reported between August 2022 through September 2022 for investigation of illegal towing of Big Sam’s for violation of CT state statute 14-145;”

¹ Hereinafter, the August 16 requests.

² The complainant’s request described in paragraph 2a., above, contained the address 95 Blanket Meadow Rd. The complainant explained that this was a typographical error and should have read 65 Blanket Meadow Rd. The respondents’ counsel represented that this typographical error did not impact their search or their ability to locate records responsive to the complainant’s request.

- c. “[r]ecords for incident reported on 08/05/2023 for investigation of illegal towing of Big Sam’s for violation of CT state statute 14-145.”

Additionally, in each of his August 16 requests, the complainant indicated that he was seeking “[a]ll reports, notes, phone records, phone recordings, audio files, video files, body camera footage, conference room video footage, and other documents or electronic date not mentioned herein.”

3. It is found that on August 17, 2023, the respondents, via counsel’s office, and by three separate emails, acknowledged each of the complainant’s August 16 requests.

4. It is found that by email sent on October 11, 2023, the respondents informed the complainant that the records responsive to his August 16³ requests were available for retrieval at the police station.

5. It is found that the complainant retrieved the available records described in paragraph 4, above, from the respondents on October 13, 2023,⁴ which consisted of the following:

- a. A memo from a Lieutenant with the respondents explaining that because of the record retention schedule, no body-camera footage was available for any of the 2022 cases;
- b. Three-page case report for Case #22-12579;
- c. Two-page case report for Case #22-14026;
- d. Seven-page case report for Case #23-10881; and
- e. Eight videos (i.e., body-camera footage).

6. It is found that on October 26, 2023, the complainant informed the respondents that records responsive to his August 16 requests were missing. The complainant further inquired if the respondents were denying access to such records and, if so, to provide the basis for such denial.

7. It is found that on October 27, 2023, the respondents asked the complainant to identify which records he thought were missing from the records provided to him.

³ The Commission notes that the respondents’ October 11, 2023 email to the complainant inadvertently referred to the complainant’s requests as being made on “August 17, 2023.” Subsequent emails clarify, and the parties do not dispute, that the records referenced in the October 11 email were, in fact, provided in response to the August 16 requests.

⁴ Pursuant to the October 4, 2024 Order of the Hearing Officer, as amended by the Notice of Modified Scheduling Order issued that same day, the respondents submitted a receipt indicating the complainant retrieved such records on October 13, 2023, which receipt is admitted into evidence as Respondents’ Exhibit 4 (After-Filed).

8. It is found that on October 30, 2023, the complainant identified the following records as missing from the records provided to him on October 13, 2023:

- a. Body-camera footage relating to Officer Twohill's investigation on August 18, 2022.
- b. For the period between September 12-14, 2022 (i) phone records for Officer Panza's investigations of Big Sams/Samuel Saunders; (ii) body-camera video of Officer Panza; (iii) lobby video and training room conference video depicting the complainant making a complaint to the police officers; and (iv) notes and phone records.
- c. For August 5, 2023: (i) portions of body camera footage from Sargent McCauley and Officer Franzago; (ii) lobby camera footage of the complainant; and (iii) training room camera footage.
- d. Policy for the retention and disposal of body camera footage, lobby video footage and training room footage (where incidents were reported).⁵

9. It is found that on the same day, the respondents replied to the complainant indicating that they would look into the records identified by the complainant.

10. By letter of complaint filed on November 7, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by not providing all records responsive to his August 16 requests.

11. 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.

12. 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

⁵ The complainant testified that he received the records identified in paragraph 8d., above, as a part of a separate FOI request and that such records were no longer at issue in this case.

person shall have the right to . . . (3) receive a copy of such records in accordance with section 1-212.

13. 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.”

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

Video Footage

Body-Camera Footage

15. As noted in paragraph 8a., b. and c., above, the complainant contends that based on the respondents' policy for the creation and retention of body-camera footage, certain body-camera footage for the events described in paragraph 2, above, should exist, but was not provided to him by the respondents.

16. The respondent Chief testified, and it is found, that no body-camera footage was withheld from the complainant pursuant to any exemptions to disclosure.

17. It is found that the respondents maintain a searchable database known as “Watch Guard” which contains all body-camera footage maintained by the respondent police department.

18. It is found that the respondents do not have the ability to delete any body-camera footage maintained in the Watch Guard database. Rather, such footage is overwritten pursuant to a retention policy whereby footage is kept for varying durations depending on how such footage is classified.

19. It is found that all body-camera footage responsive to the complainant's August 16 requests were subject to a 90-day retention period.

20. With respect to the complainant's requests for body-camera footage described in paragraph 2a. and b., above, it is found that any such footage would have been overwritten prior to the respondents' receipt of the complainant's August 16 requests, as approximately one year had elapsed from the date of those events and the complainant's requests.

21. Accordingly, it is found that the respondents did not maintain any body-camera footage responsive to those portions of the requests described in paragraphs 2a. and b., above, at the time of the complainant's August 16 requests.

22. With respect to the body-camera footage requested for August 5, 2023 (i.e., as described in paragraph 2c., above), it is found that such footage would not have been overwritten

pursuant to the respondents' 90-day retention policy, as only 11 days had passed between those events and the complainant's August 16 request for such footage.

23. However, as found in paragraphs 16, 17, and 18, above: (i) the respondents did not withhold any available body-camera footage maintained in their Watch Guard database; (ii) the Watch Guard database contains all body-camera footage maintained by the respondents; and (iii) the respondents are not able to delete body-camera footage maintained in their Watch Guard database. It is found, therefore, that any body-camera footage the complainant alleges was not provided to him in response to his August 16 request described in paragraph 2c., above, never existed.

24. Accordingly, it is found that the respondents provided the complainant with all body-camera footage responsive to his August 16 request described in paragraph 2c., above.

25. With respect to the complainant's contention that additional footage should exist pursuant to the respondents' body-camera policy, it is well settled that this 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 Jon Schoenhorn v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection et al., Docket #FIC 2022-0598 (October 11, 2023).

26. Moreover, as the respondents' disclosure obligations under the FOI Act extend only to those records which they maintain at the time of the request, the Commission lacks jurisdiction to consider whether the respondents acted properly, pursuant to their policies and procedures, with respect to the creation of a public record – in this case body camera footage. See Id. (“[N]othing in the FOI Act . . . suggests that the respondents' failure to comply with such policy constitutes a violation of the FOI Act.”); see also §1-210(a), G.S. (“[A]ll 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.”) (Emphasis added.)

27. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the body-camera footage requested by the complainant in his August 16 requests.

Lobby & Training Room Footage

28. The complainant next maintains that the respondents failed to provide him with video footage of the Monroe Police Department lobby and training room for September 12-14, 2022, and August 5, 2023.

29. With respect to the requested lobby footage, it is found that such footage is maintained separately from the body-camera footage and with the respondents' Information Technology (“IT”) Department. It is further found that the lobby footage is not maintained

pursuant to a retention policy, but is automatically overwritten based on volume and as electronic storage is needed.

30. It is found that in correspondence to the complainant dated September 20, 2024, the respondents indicated that the lobby footage requested by the complainant was overwritten by the time of the complainant's August 16 requests.

31. It is found that notwithstanding the respondents' conclusory statement that the lobby footage was not maintained at the time of the complainant's August 16 requests, the respondents did not provide evidence that, *at the time they received the complainant's requests*, they conducted a search for such records, such as inquiring with their IT Department as to whether the lobby footage for the dates referenced in the complainant's August 16 requests was, in fact, overwritten and if so, when.⁶

32. Accordingly, it is found that the respondents failed to prove that they conducted a thorough and diligent search for lobby footage for the dates referenced in the complainant's August 16 requests.

33. It is concluded, therefore, that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the requested lobby footage.

34. With respect to the requested training room footage, it is found that the training room at the Monroe Police Department does not have cameras, and thus, no responsive records exist for those portions of the complainant's August 16 requests seeking such footage.

35. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to the training room footage requested in the complainant's August 16 requests.

Other Records the Complainant Alleges Should Have Been Provided

36. The complainant maintains that the respondents failed to provide him with notes or phone records concerning the investigation "of illegal towing of Big Sam's for violation of CT state statute 14-145."

37. As noted in paragraph 8b., above, the complainant indicated that such investigation would have occurred between September 12 and 14, 2022. It is found, however, that the Case/Incident report covering that period specifically indicates that the respondents did not investigate such matter. See Complainant's Exhibit F.

⁶ Even if the Commission *could* reasonably infer that lobby footage from 2022 was overwritten by the time of the complainant's August 16 requests, the relatively short period of time between the events occurring on August 5 2023, and the complainant's August 16 requests raises significant questions as to whether the lobby footage was actually maintained by the respondents at the time of the request, and the factual basis supporting the respondents' conclusory statement that such records did not exist at the time of the complainant's requests.

38. Accordingly, it is found that the respondents did not maintain notes or phone records concerning the investigation “of illegal towing of Big Sam’s for violation of CT state statute 14-145[,]” as such investigation did not occur.

39. It is concluded, therefore, that the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., with respect to notes and phone records concerning the investigation “of illegal towing of Big Sam’s for violation of CT state statute 14-145.”

40. At the first contested case hearing in this matter, the complainant testified that on August 5, 2023, he made another complaint with the respondents concerning the “illegal towing of Big Sam’s for violation of CT state statute 14-145.”

41. The complainant testified that when making the August 5, 2023 complaint: (i) he provided the officer taking his complaint with correspondence between himself and the Department of Transportation related to illegal towing; and (ii) the officer taking his complaint was writing notes.

42. The complainant maintains that the respondents provided neither the correspondence nor the officer’s notes identified in paragraph 41, above, despite such records being responsive to his August 16 requests.

43. It is found that the respondents did not present any evidence rebutting the complainant’s first-hand accounts that: (i) he provided certain records to the respondents when making his complaint on August 5, 2023; and (ii) an officer created notes based on that complaint.⁷

44. Moreover, it is found that the respondents did not provide any testimony or evidence concerning whether a search for such correspondence or notes was conducted and, if so, the results of such search.

45. It is found that the respondents failed to prove that they provided the requested correspondence and notes described in paragraph 41, above.

46. It is concluded, therefore, that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to produce all records responsive to the complainant’s August 16 requests.

Promptness

47. The complainant contends that the records the respondents provided in response to his August 16 requests were not produced promptly.

⁷ The complainant also testified that the body-camera footage disclosed by the respondents for August 5, 2023, shows that the officer was taking notes while taking the complainant’s complaint.

48. The Commission has held that the meaning of the word “promptly” is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (January 11, 1982), the Commission advised that the word “promptly,” as used in §1-210(a), G.S., means “quickly and without undue delay, taking into account all factors presented by a particular request.”

49. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requestor, if ascertainable; and the importance to the public of completing other agency business without the loss of personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

50. As noted in paragraphs 2 through 4 above, 56 days elapsed from when the complainant submitted his requests on August 16, 2023, and when the respondents made such records available to the complainant on October 11, 2023.

51. The respondents testified that several factors contributed to the time it took to produce responsive records. Such factors included: (i) other FOI requests from the complainant that were being processed at the same time; (ii) the multiple staff members tasked with processing the complainant’s other requests; (iii) the lack of available staffing due to the increased number of vacations taken in August 2023⁸; (iv) the difficulty in processing body-camera footage due to the nature of such footage and limited access to such footage within the department;⁹ (v) the respondents’ need to balance their policing duties with their obligations under the FOI Act; and (vi) that multiple staff members were involved in “double and triple checking their work.”

52. It is found that the respondents did not provide specific dates for when they began their search for records, located responsive records, and provided those records to counsel for disclosure to the complainant.

53. With respect to the body-camera footage disclosed to the complainant, the respondents submitted the affidavit of Lieutenant Stephen Corrone dated October 16, 2024, which has been marked as Respondents’ Exhibit 6 (After-Filed)¹⁰. In his affidavit, Lt. Corrone

⁸ Pursuant to the October 4, 2024 Order of the Hearing Officer, as amended by the Notice of Modified Scheduling Order issued that same day, the respondents submitted a schedule detailing the staffing levels during the time when the respondents were processing the complainant’s August 16 requests. Such schedule and its accompanying affidavit of Attorney David A. Ryan, dated October 16, 2024 are admitted into evidence as Respondents’ Exhibit 5 (After-Filed).

⁹ The respondent Chief testified that only Lieutenants review body camera footage in response to FOI requests, and that at the time of complainant’s August 16 requests, only three Lieutenants were available to review body camera footage.

¹⁰ Such affidavit was submitted pursuant to the October 4, 2024 Order of the Hearing Officer, as amended by the Notice of Modified Scheduling Order issued that same day.

provided an overview of the respondents' process for collecting, reviewing, and disclosing body-camera footage. Lt. Corrone attested, in relevant part, that:

7. Video length can range from a few minutes to a few hours.
8. This process is rarely accomplished in one session. If requests span multiple days or involve multiple officers, many days' worth of sessions can be required.
- ...
10. I also review the videos to determine if any redaction of information or images is needed. If redaction is required, the video is downloaded on a USB and transferred onto a separate computer where the redaction software is located.
11. Redaction requires the review and redaction of the video twice. The first review is for any images needing redaction and the second is for the redaction of any audio.
12. There is a significant amount of time downloading the video from system to system and onto USB flash drives.

54. It is found, however, that even if the Commission could reasonably infer that the respondents followed their procedure outlined in Respondents' Exhibit 6 when processing the body-camera footage requested by the complainant, such affidavit is devoid of any particularity as to the records at issue in this case. For instance, the affidavit does not address: (i) whether the footage length *in this case* was a few minutes or a few hours; or (ii) if, *in this case*, multiple officers and review sessions were involved.

55. Similarly, Respondents' Exhibit 6 indicates that processing body-camera footage takes significantly longer if redactions are required. As noted in paragraph 16, above, the Chief testified that no body-camera footage was withheld. The affidavit does not address the processing time it would take when no redactions are necessary.

56. As noted in paragraph 5, above, the administrative record only indicates that eight body-camera videos were disclosed to the complainant. The respondents failed to provide and therefore administrative record lacks sufficient evidence to determine where those eight videos fell on the continuum of complexity and difficulty for review and disclosure. The issues identified in paragraphs 54 and 55, above, are critical for the Commission to determine whether the 56 days it took the respondents to disclose such body-camera footage was prompt *under the circumstances*.

57. Accordingly, it is found that the respondents failed to prove that they promptly provided the complainant with the available body-camera footage for his August 16 requests.

58. Moreover, it is found that the other documents disclosed by the respondents (specifically the Case/Incident reports) consisted of only 11 pages and contained minimal redactions.

59. The Commission has previously expressed that public agencies should work to mitigate delays by providing records on a rolling basis. See Docket #FIC 2020-0068, Russell Peeler v. Chief, Police Department, City of Bridgeport et al. (March 10, 2021) (“[T]he Commission is concerned, given the length of time between the date of the request in this case and the date the requested records were located, that the respondents did not act quickly to review the records and send even a portion of them, on a rolling basis, to the complainant.”); Docket #FIC 2009-760, Donal C. Collimore v. Planning and Zoning Commission, City of Bridgeport et al., (September 8, 2010) (“[C]ertain responsive records. . . could have been provided more promptly to the complainant. . . and the provision of records on a rolling basis . . . is the better course of action.”)

60. Under the facts and circumstances of this case, even taking the respondents’ reasons for delay into consideration, it is found that the respondents failed to provide the records to the complainant promptly.

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

Civil Penalties

62. In his complaint, the complainant requested that the Commission “fine and apply all penalties and or fines allowed to the full extent of the law for the appeal of the 3 FOIA requests made.”

63. It is found that although the respondents: (i) failed to prove that they provided the complainant with all records responsive to his August 16 requests, specifically the correspondence and notes identified in paragraph 41 above, and (ii) did not act promptly in disclosing records to the complainant, there is no evidence that the respondents acted in bad faith, deliberately delayed the disclosure of records, or otherwise engaged in a pattern of conduct resulting in repeated violations of the public’s rights under the FOI Act.

64. Accordingly, based on the facts and circumstances of this case, the Commission declines to consider the imposition of a civil penalty on the respondents.

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) perform a thorough and diligent search for the correspondence and

notes identified in paragraph 41 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, the respondents shall so state in the affidavit. If the respondents are able to locate such records the respondents shall so state in the affidavit and provide a copy of such records to the complainant, free of charge.

2. The respondents are advised that upon receiving future requests concerning records that may be automatically overwritten, they act expeditiously in identifying whether such records exist, and if so, place a hold on such records so that they are not overwritten and can be provided in response to such requests.

3. Henceforth, the respondents shall strictly comply with the promptness and disclosure requirements of §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of October 23, 2024.



Molly 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:

JOAO CAMPOS, 404 Mariners Walk, Milford, CT 06468

KEITH WHITE, CHIEF, POLICE DEPARTMENT, TOWN OF MONROE; POLICE DEPARTMENT, TOWN OF MONROE; AND TOWN OF MONROE, c/o Attorney David A. Ryan Jr., Ryan & Ryan, LLC, 900 Chapel Street, Suite 621, New Haven, CT 06510



Molly Steffes
Acting Clerk of the Commission