

STATE OF CONNECTICUT  
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Esteban Hernaiz,

Complainant

against

Docket # FIC 2023-0595

Chief, Police Department, City of Hartford;  
Police Department, City of Hartford; and  
City of Hartford,

Respondents

October 23, 2024

The above-captioned matter was heard as a contested case on May 15, 2024 and September 12, 2024, at which times 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 Anthony Sinchak v. Freedom of Information Commission*, Docket No. CV 03-0826293, 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, on August 8, 2023, the complainant, via a telephone call with the Police Department, City of Hartford (hereinafter “Hartford Police Department”), made an oral request for copies of body worn camera footage of Police Officer K. Rivera of the Hartford Police Department (“Officer Rivera”) related to an incident involving the complainant on November 9, 2021 (the “Incident”).
3. It is found that, by letter dated August 9, 2023, the Sergeant of the Civil Litigation-FOI Unit for the Hartford Police Department (the “Sergeant”) acknowledged the complainant’s request described in paragraph 2, above, and stated the following:

[t]he Hartford Police Department is in receipt of your Freedom of Information request, which was received by my office via telephone on August 8, 2023.

Please be advised that the Hartford Police Department will make a concerted effort to provide said records within a reasonable time frame, but all requests are processed in the order that they are

received. Once we have identified the documents you requested, to the extent they exist, you will be notified.

Please be advised, that under the Freedom of Information laws of the State of Connecticut, the City of Hartford is not obligated to create a document that does not already exist. This includes putting a document into electronic format when it exists only in hardcopy form. It is the policy of the City of Hartford to charge fifty cents per page of any document duplicated.<sup>1</sup>

4. By letter dated November 13, 2023, and filed November 21, 2023, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act by denying his request for records. The sole records request alleged in such complaint is as follows:

[o]n Aug 8, 2023 Hartford Internal Affairs transferred me to FOI Liaison Sgt. Benway at the Hartford Police Department via phone. Under the FOI Act Sec 1-210 I requested a copy of body cam audio/video of Police Officer K. Rivera on Nov 9, 2021. Sgt. Benway denied me copies of body cam audio/video of K. Rivera on Nov 9, 2021. ...<sup>2</sup>

5. It is found that, by letter dated November 23, 2023, the complainant, *after* the complaint at issue in this case was filed, submitted a written request to the Hartford Police Department for “a copy of body cam audio/video of K. Rivera on Nov 9, 2021.”

6. It is found that, by letter dated December 5, 2023, the Sergeant acknowledged the complainant’s November 23, 2023 request described in paragraph 5, above.

7. It is found that, by letter dated April 2, 2024, the respondents sent copies of the body worn camera footage of Officer Rivera related to the Incident, along with other related records to the Connecticut Department of Correction’s FOI Administrator.<sup>3</sup> It is found that the respondents

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<sup>1</sup> At the hearings on this matter, the complainant testified that he also requested the body worn camera footage of the November 9, 2021 incident in 2021 and 2022, but the respondents denied such requests. It is found that the complaint at issue in this matter does not reference such prior requests and thus such requests are outside the scope of the complaint.

<sup>2</sup> At the hearings on this matter, the complainant also alleged that he requested police reports and internal affairs investigative reports related to the Incident. It is concluded, however, that such allegation was not fairly raised within the scope of the complaint and therefore is not before the Commission.

<sup>3</sup> Such records were provided in accordance with §1-210(c), G.S., which provides:

[w]hensoever a public agency receives a request from any person confined in a correctional institution or facility or a Whiting Forensic Hospital facility, for disclosure of any public record under the Freedom of Information Act, the public agency shall promptly notify the Commissioner of Correction or the Commissioner of Mental Health and Addiction Services in the case of a person confined in a Whiting Forensic Hospital facility of such request, in the manner prescribed by the commissioner, before complying with the request as required by the Freedom of Information Act. If the commissioner believes the requested record is exempt from disclosure pursuant to subdivision (18) of subsection (b) of this section, the commissioner may withhold such record from such person when the

redacted from such video footage certain individuals' faces (except for the complainant and the officers involved), hospital computer screens, police notepad(s), NCIC<sup>4</sup> information and certain other identifying information.<sup>5</sup>

8. 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.

9. 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.

10. 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."

11. It is concluded that the requested records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

12. Section 1-206(a), G.S., provides in relevant part:

Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, **in writing, within four business days of such request .... Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.**

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record is delivered to the person's correctional institution or facility or Whiting Forensic Hospital facility.

<sup>4</sup> National Crime Information Center.

<sup>5</sup> It is also found that, at some point subsequent to the filing of the complaint, the complainant's attorney obtained possession of the video footage provided to the FOI Administrator and showed such video footage to the complainant.

(Emphasis Added.)

13. Section 1-206(b)(1), G.S., provides in relevant part:

Any person denied the right to inspect or copy records under section 1-210 ... or denied any other right conferred by the [FOI] Act may appeal therefrom to the [FOI] Commission, by filing a notice of appeal with said commission. **A notice of appeal shall be filed not later than thirty days after such denial....** For purposes of this subsection, such notice of appeal shall be deemed to be filed on the date it is received by said commission **or on the date it is postmarked, if received more than thirty days after the date of the denial from which such appeal is taken.**

(Emphasis Added.)

14. It is found that, prior to the filing of the complaint described in paragraph 4, above, the respondents did not deny the complainant's August 8, 2023 records request in writing, pursuant to §1-206(a), G.S. For purposes of §§1-206(a) and 1-206(b)(1), G.S., it is found that the complainant's August 8, 2023 request, described in paragraph 2, above, is deemed to have been denied on August 14, 2023, four business days from the date the respondents received the request.

15. It is found that the complainant's complaint to the Commission was postmarked November 16, 2023, which is ninety-four days after the August 14, 2023 denial of the complainant's request described in paragraph 2, above.

16. No evidence exists in the Administrative Record that the complainant renewed his request for the records described in paragraph 2, above, at any time between his August 8, 2023 request and the filing of his complaint in this matter on November 21, 2023.

17. It is found that the November 23, 2023 request described in paragraph 5, above, was submitted to the respondents subsequent to the filing of the complaint described in paragraph 4, above. Therefore, such request is outside the scope of the complaint in this matter and not before the Commission.

18. Based on the foregoing, it is found that the complainant did not file his appeal within thirty days of the denial of his records request at issue in this matter, as required by §1-206(b)(1), G.S.

19. It is therefore concluded that the Commission lacks jurisdiction over this matter.

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 October 23, 2024.

A handwritten signature in blue ink, appearing to read "Molly Steffes", is written over a horizontal line.

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:

**ESTEBAN HERNAIZ, #267849**, MacDougall-Walker Correctional Institution, 1153 East Street South, Suffield, CT 06080

**CHIEF, POLICE DEPARTMENT, CITY OF HARTFORD; POLICE DEPARTMENT, CITY OF HARTFORD; AND CITY OF HARTFORD**, c/o Attorney Nathalie Feola-Guerrieri, Office of the Corporation Counsel, 550 Main Street, Hartford, CT 06103



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Molly Steffes  
Acting Clerk of the Commission