

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Dwayne Sayles,

Complainant

against

Docket # FIC 2024-0263

Karl Jacobson, Chief, Police Department,
City of New Haven; Police Department,
City of New Haven; and City of New
Haven,

Respondents

April 23, 2025

The above-captioned matter was heard as a contested case on October 8, 2024 and February 7, 2025, 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 Docket No. CV 03-0826293, *Anthony Sinchak v. FOIC et al*, 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, by letter dated April 22, 2024, the complainant requested that the respondents provide him with a copy of all records pertaining to the investigation of a crime that occurred on April 6, 2015 involving the complainant, including:
 - a. Statements, supplemental reports, incident reports, police reports, police misconduct reports;
 - b. Lab Reports, forensics reports, GRC reports, DNA reports, Ballistic reports, phone analysis, surveillance camera videos and recordings;
 - c. 911 call recordings, audio recordings of interviews, video recordings of interviews; and
 - d. Records of any deals, inducements, and promises.
3. By complaint filed May 10, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying his

request for the records described in paragraph 2, above. The complainant requested that the Commission impose a civil penalty against the respondents.

4. 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.

5. 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 the provisions of section 1-212.

6. 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.”

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

8. It is found that on or about June 6, 2024, the respondents provided copies of records responsive to the request described in paragraph, 2 above, to the FOI Administrator of the Department of Correction (“DOC”), pursuant to §1-210(c), G.S., to thereafter be provided to the complainant.¹ It is further found that, on or about June 17, 2024, the DOC provided such records to the complainant.

9. It is found that, by letter dated July 1, 2024, the respondents notified the complainant that all responsive records had not been provided. It is found that audio and video recordings responsive to the complainant’s request, described in paragraphs 2(a) and 2(c), above, needed to be reviewed prior to disclosure and that the respondents were “in the process of transferring

¹ The Commission notes that the process for providing records to an incarcerated person is governed by §1-210(c), G.S. Section 1-210(c), G.S., provides that a public agency must notify the Commissioner of Correction when it receives a request from a person confined in a correctional facility. The policy implementing §1-210(c), G.S., provides that records requested by an incarcerated person shall be delivered to the DOC FOI Administrator to conduct a review to determine whether such records, or portions thereof, are exempt from disclosure pursuant to §1-210(b)(18), G.S. If the Commissioner of Correction believes that the requested records are exempt from disclosure pursuant to §1-210(b)(18), G.S., the Commissioner may withhold such records from such person when the records are delivered to the correctional institution. An incarcerated person who believes records have been improperly withheld may file a complaint against the DOC with the FOI Commission.

information from the physical DVDs to [their] redaction software” for processing. It is found that the respondents also advised that, due to an “extensive backlog of requests for video/audio” and there would be “substantial wait time” prior to disclosure.

10. It is also found that the respondents denied the complainant’s request for the records described in paragraph 2(b), above, contending that the complainant needed to request such records from the “State of CT Laboratory” because the respondents lacked “the legal authority to disseminate” such records.

11. At the October 8, 2024, hearing in this matter, the respondents contended that all records responsive to the request described in paragraph 2, above, with the exception of the records described in paragraphs 9 and 10, above, had been provided. Notwithstanding, the respondents represented that they would conduct an additional search for records.

12. It is found that on or about December 30, 2024, the respondents provided the FOI Administrator of the DOC with a copy of additional records responsive to the complainant’s request, described in paragraph 2(b), above, thereby withdrawing their claim that they were not authorized to disclose such records to the complainant. It is also found that the respondents provided a compact disc containing certain responsive records. It is also found that on or about January 9, 2025, the DOC provided such records, excluding the compact disc, to the complainant. It is further found that the complainant arranged with the DOC to have the compact disc delivered to a family member.²

13. At the February 7, 2025, hearing in this matter, the respondents contended that all responsive records, with the exception of the audio and video recordings, described in paragraph 9, above, that they maintain in their possession had been provided to the complainant. The complainant disputed this contention and expressed frustration regarding the delay with respect to disclosure of the audio and video recordings.

14. With respect to the contention that the respondents have not provided all records responsive to the complainant’s request, with the exception of the audio and video recordings, at the hearings, the complainant testified that during the course of his prosecution related to the matter referenced in paragraph 2, above, his lawyer had approximately 12 boxes of records, and therefore, far more than the respondents provided to him in response to his request in this matter.

15. It is found that the respondents searched all locations where the records responsive to the request described in paragraph 2, above, would be located in their offices, and that they located all responsive records *in their possession*.

16. It is found, however, that the respondents provided records pertaining to the criminal investigation referenced in paragraph 2, above, to the State’s Attorney Office that prosecuted the complainant during the period in which the prosecution was pending. It is found that, at the time of the hearings, the respondents had not determined whether they maintained any log of the

² The Commission notes that the respondents represented that the compact disc contains 3,064 pages of records responsive to the complainant’s request. However, at the time of the hearings, the complainant had not had an opportunity to review such records.

records that were provided to the State's Attorney.

17. Section 1-210(a), G.S., governs access to public records and provides, in relevant part, that "all records maintained or kept on file by a public agency . . . shall be public records and every person shall have the right to . . . receive a copy of such records...." In other words, if the records do not exist or the public agency does not have access to them, the agency is not required to produce them.

18. It is found that the respondents provided no evidence concerning their ability to access their public records in the possession of the State's Attorney and to disclose copies of such records that are responsive to the request described in paragraph 2, above, to the complainant, nor did the respondents contend that they were not legally entitled to access, or retrieve, such records.

19. The respondents cannot avoid disclosure of a public record merely by not having physical possession of such record. See e.g., First Selectman, Town of Columbia v. State of Connecticut, Freedom of Information Commission and John M. Leahy, Docket #CV 00 0501055, Judicial District of New Britain, November 28, 2000 (Owens, J.) (claim that records are not in the physical possession of public agency is unavailing); Fromer v New London Director of Law, Docket #FIC92-71 (Feb. 24, 1993) (concluding that "all of the non-exempt records requested by the complainant, access to which the respondent is legally entitled ...are public records ... [and] [t]o hold otherwise would be to permit agencies to avoid disclosure of otherwise public records merely by transferring physical possession to another person"); and Cushman v. Hartford Police Department, et al., Docket #FIC 2023-0632 (Nov. 20, 2024) (ordering the police department to request that the State's Attorney's Cold Case Unit return the police department's records in order for the respondents to comply with a request for records).

20. It is found that, by not requesting records responsive to the complainant's request from the State's Attorney, the respondents failed to prove that they disclosed all records responsive to the complainant's request described in paragraph 2, above.

21. With respect to the outstanding audio and video recordings, 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 consideration all of the factors presented by a particular request.

22. 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 requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request. In addition, common sense and goodwill ought to be the guiding principles.

23. It is found that the respondents process requests for audio and video recordings in the order in which they are received but may prioritize requests when they are aware of special circumstances, such as an upcoming court date.

24. It is found that the respondents attribute the delays in disclosure to staffing constraints, and the volume and complexity of requests for audio and video recordings. It is also found that the respondents' records division handles requests for audio and video recordings, and that such division employs five staff to process records requests. It is also found that three of the five staff are assigned to process audio and video recordings. It is further found, however, that all five staff have other responsibilities such as processing arrestees, preparing records for court, data entry, and performing informational checks for officers on duty. It is further found that three of the five staff are called upon to fulfill other mandated duties as needed. It is further found that, due to their other responsibilities, all five staff do not process records requests on a daily basis.

25. With respect to the complainant's request for audio and video recordings, it is found that by the time of their first communication to the complainant, dated July 1, 2024, two months had transpired since the request. It is also found that, at the hearings in this matter, no evidence was presented to explain the efforts taken by the respondents to comply with the complainant's request, described in paragraph 2, above, during such time.

26. It is found that, although the respondents notified the complainant that they had retrieved audio and video recordings, and that they were transferring them to their redaction software for review, they provided no information to the complainant about the number of responsive records located, their length, or their nature. It is also found that no testimony was offered at the hearings regarding such matter.

27. It is found that by September 4, 2024, there were approximately 335 requests for audio and/or video recordings in the processing queue ahead of the complainant's request described in paragraph 2, above. It is also found that by December 30, 2024, there were approximately 313 requests pending in the queue ahead of the complainant's request. It is also found that by the February 7, 2025, hearing in this matter, there were approximately 299 pending in the queue ahead of the complainant's request.

28. It is found that the request described in paragraph 2 above, does not set forth any time by which the complainant needed the records. It is further found, however, that at the February 7, 2025, hearing in this matter, the complainant explained that he needed copies of the requested records by August 2025, for a pending legal matter.

29. The Commission acknowledges that the respondents were facing challenges in processing requests for audio and video recordings, such as staffing, backlogged requests, and the time-consuming and complex task of reviewing audio and video footage. However, under the facts and circumstances of this case, and taking into consideration the respondents' reasons for the delay, it is found that the respondents failed to provide all records responsive to the request described in paragraph 2, above, to the complainant promptly.

30. It is therefore concluded that the respondents violated the promptness and disclosure provisions of §§1-210(a) and 1-212(a), G.S., as described in the complaint.

31. Notwithstanding the foregoing findings and conclusions, the Commission declines, in its discretion, to consider the imposition of a civil penalty in this case.

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

1. Within seven (7) days of the date of the Notice of Final Decision in this matter, the respondents shall request from the Office of the State's Attorney the records (or copies thereof) that are responsive to the request described in paragraph 2, above.

2. Within forty-five (45) days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with copies of all records received by the respondents from the Office of the State's Attorney pursuant to paragraph 1 of this order.

3. In complying with paragraph 2 of this order, the respondents may redact only those portions of the responsive records, if any, that are mandatorily exempt from disclosure. The respondents may not redact any information that is permissively exempt from disclosure. The respondents shall provide such records to the complainant free of charge. If, pursuant to this order, the respondents withhold any record they claim is subject to a mandatory exemption, they shall submit an affidavit to the complainant detailing the type of record withheld and the mandatory exemption upon which they relied for withholding such record.

4. If the respondents are unable to retrieve and disclose copies of responsive records from the Office of the State's Attorney within the time prescribed in paragraph 2, above, the respondents shall submit an affidavit to the complainant explaining the reason.

5. Within sixty (60) days of the date of the Notice of Final Decision in this matter, the respondents shall provide the complainant with copies of all audio and video recordings responsive to the request described in paragraph 2, above.

6. In complying with paragraph 5 of this order, the respondents may redact only those portions of the responsive records, if any, that are mandatorily exempt from disclosure. The respondents may not redact any information that is permissively exempt from disclosure. The respondents shall provide such records to the complainant free of charge. If, pursuant to this order, the respondents withhold any record they claim is subject to a mandatory exemption, they shall submit an affidavit to the complainant detailing the type of record withheld and the mandatory exemption upon which they relied for withholding such record.

7. Henceforth, the respondents shall strictly comply with the disclosure and promptness provisions in §§1-210(a) and 1-212(a), G.S.

Approved by Order of the Freedom of Information Commission at its regular meeting of April 23, 2025.

/s/ Jennifer M. Mayo

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:

DWAYNE SAYLES, #386036, Cheshire Correctional Institution, 900 Highland Avenue,
Cheshire, CT 06410

**KARL JACOBSON, CHIEF, POLICE DEPARTMENT, CITY OF NEW HAVEN;
POLICE DEPARTMENT, CITY OF NEW HAVEN; AND CITY OF NEW HAVEN**, c/o
Attorney Joseph M. Merly, New Haven Corporation Counsel, 165 Church Street, New Haven,
CT 06510

/s/ Jennifer M. Mayo
Jennifer M. Mayo
Acting Clerk of the Commission

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