

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

In the Matter of a Complaint by

FINAL DECISION

Joan Coe,

Complainant

against

Docket # FIC 2024-0027

Town Manager, Town of Simsbury; Town of Simsbury; Chief, Police Department, Town of Simsbury; and Police Department, Town of Simsbury,

Respondents

January 8, 2025

The above-captioned matter was heard as a contested case on August 22, 2024, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits 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. By complaint emailed January 15, 2024 and received on January 16, 2024, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide her copies of records in response to several of her records requests she had submitted to the respondents in the past.
3. It is found that the complainant referenced in and/or attached to her complaint¹ described in paragraph 2, above, various records requests she submitted to the respondents dated September 21, 2021, September 14, 2023, November 1, 2023, January 6, 2024, as well as an undated request, with an acknowledgment by the respondents on December 21, 2023; an undated request, with an acknowledgment by the respondents on December 14, 2023; and a third undated request for police records without an accompanying acknowledgment.²

¹ The Commission notes that the complainant failed to fully comply with the requirements of Section 1-21j-28 (a)-(b) (Form of complaint) of the Regulations of Connecticut State Agencies, and instead filed a complaint with a hodgepodge of requests, replies to requests and portions thereof attached to the complaint, which caused confusion at the hearing on this matter as well as a challenge for the hearing officer to parse through. The Commission strongly recommends that the complainant review Section 1-21j-28 (a)-(b) and strictly comply with such section going forward with respect to any future complaints she might file with the Commission. General complaints are not permissible.

² At the hearing on this matter, the complainant withdrew her complaint against the respondent Town Manager with respect to a records request she submitted to the Town Manager dated January 2, 2024. As a result such claim will

Jurisdiction

4. 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.

5. 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.)

6. With respect to the complainant's records requests dated September 21, 2021, September 14, 2023, and November 1, 2023, referenced in paragraph 3, above, it is found that the Commission lacks any evidence upon which to base a finding that the respondents denied, in writing, any records responsive to such requests during the thirty days prior to the filing of the complainant's complaint described in paragraph 2, above.³

7. Based on the foregoing, it is found that the complainant failed to prove that she filed her appeal within thirty days of the alleged denial of her records requests dated September 21, 2021, September 14, 2023, and November 1, 2023, as required by §1-206(b)(1), G.S.

8. It is therefore concluded that the Commission lacks jurisdiction over the complainant's records requests dated September 21, 2021, September 14, 2023, and November 1, 2023, referenced in paragraph 6, above.

9. With respect to the complainant's undated records request, which the respondents

not be further addressed herein and all references to the respondents herein refer to the Chief, Police Department, Town of Simsbury and Police Department, Town of Simsbury.

³ Assuming there was no written denial, the complainant's requests dated September 21, 2021, September 14, 2023, and November 1, 2023, described in paragraph 3, above, would have been deemed denied four business days from the date the respondents received the requests, or September 27, 2021, September 20, 2023, and November 7, 2023, respectively, for purposes of §§1-206(a) and 1-206(b)(1), G.S.

acknowledged on December 21, 2023, referenced in paragraph 3, above, it is found that the complainant sought records related to the arrest of Andrew Bonee, Case #23-38758 (“Case #23-38758 Request”). The respondents contended that the Commission lacks jurisdiction over such records request because the complainant failed to file her complaint within thirty days of such request.

10. The Commission has consistently held that a complaint must be filed within thirty days of a deemed **denial** by statute. *Ismael Hernandez III v. Chief, Fire Department, City of Bridgeport*, Docket #FIC 2006-242 (January 24, 2007).

11. The FOI Act does not bar successive requests nor successive denials and, thus, there is no requirement that an appeal to the Commission, pursuant to § 1-206(b), G.S., be taken from the first denial of a particular request. *Board of Education v. Freedom of Info. Comm'n*, 208 Conn. 442, 451 (1988). Such a rigid requirement “would frustrate the strong legislative policy in favor of the open conduct of government and free public access to government records.” *Id*; *see also Ross Garber v. Commissioner, State of Conn., Depart of Banking, et al.*, Docket #FIC 2019- 0159 (March 11, 2020) (complaint was timely filed when the last email exchange between the parties occurred five days prior to the filing of the complaint with the Commission, even though the initial records request occurred more than thirty days prior).

12. It is found that on December 21, 2023, the respondents emailed the complainant with respect to the Case #23-38758 Request indicating that “[b]ased on workload and staffing, we estimate being able to fulfill your request by February 29, 2024 or shortly thereafter.”

13. For purposes of filing a complaint with the Commission, the FOI Act “requires compliance with a request for public records—not simply ‘assurances’ that the agency will comply at some point in the future” *City of Bridgeport v. Freedom of Info. Comm'n*, 222 Conn. App. 17, 63 (2023), cert. denied, 348 Conn. 936 (2024).

14. It is found that the respondents conceded in their December 21, 2023 email described in paragraph 12, above, that it had not complied with the Case #23-38758 Request and would not do so for more than two months. It is therefore found that the respondents’ December 21, 2023 email constituted, at that time, a denial of access to the complainant’s request for records and, thus, that the complaint was filed within thirty days of such denial as required by §1-206(b)(1), G.S.

15. Consequently, it is concluded that the Commission has jurisdiction over the Case #23-38758 Request.

16. With respect to the undated request with an acknowledgement by the respondents dated December 14, 2023, referenced in paragraph 3, above, it is found that the complainant failed to proffer any evidence that such request was denied later than December 14, 2023.

17. Based on the foregoing, it is found that the complainant did not file her appeal within thirty days of the denial of her records request described in paragraph 16, above, as required by §1-206(b)(1), G.S.

18. It is therefore concluded that the Commission lacks jurisdiction over the complainant’s undated request referenced in paragraph 16, above.

19. With respect to the separate undated records request with no response attached described in paragraph 3, above, it is found that the complainant failed to allege a cognizable claim and failed to proffer any evidence at the hearing on this matter with regard to the date of her request or any denial thereof.

20. It is therefore concluded that the Commission lacks jurisdiction over the complainant's undated records request referenced in paragraph 19, above.

21. With respect to the complainant's records request dated January 6, 2024, referenced in paragraph 3 above, it is found that the complainant requested that the respondents provide her with a copy of the police report for an incident that occurred at 133 Holcomb Street in Simsbury, Case # 23-41050 (the "Case # 23-41050 Request").

22. For purposes of §§1-206(a) and 1-206(b)(1), G.S., it is found that Case # 23-41050 Request, described in paragraph 21, above, was deemed to have been denied four business days from the date the respondents received such request, or January 11, 2024.

23. Based on the foregoing, it is found that the complainant filed her appeal within thirty days of the denial of the Case # 23-41050 Request, as required by §1-206(b)(1), G.S.

24. It is therefore concluded that the Commission has jurisdiction over the Case # 23-41050 Request.

25. Accordingly, it is found that the *only two records requests over which the Commission has jurisdiction and are at issue in this matter* are as follows:

- a. the Case #23-38758 Request concerning the arrest of Andrew Bonee;⁴ and
- b. the Case # 23-41050 Request concerning an incident that occurred at 133 Holcomb St. in Simsbury.

26. 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.

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

[e]xcept as otherwise provided by any federal law or state statute,

⁴ It is found that, on December 15, 2023, the complainant requested that the respondent provide her with "all reports, warrants ... leading to the arrest of Andrew Bonee Case # 38758."

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.

28. 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.”

29. It is concluded that the records described in paragraph 25, above, are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

30. After reviewing and considering the full Administrative Record following the hearing on this matter, the undersigned hearing officer determined that additional evidence was required regarding the respondents’ response to the Case #23-38758 Request, as well as its claim of exemption with respect to the Case # 23-41050 Request.

31. On December 12, 2024, the hearing officer ordered the respondents to submit an affidavit attesting to certain information referenced in paragraph 30, above. On December 18, 2024, in response to the hearing officer’s December 12, 2024 Order, the respondents submitted an affidavit dated December 18, 2024, of Nicholas Boulter, the Chief of the Police Department for the Town of Simsbury (the “Chief’s Affidavit”) – Respondents’ Exhibit 3 (after-filed) as well as an affidavit dated December 18, 2024, of Nicole Sisk of the Records Division of the Police Department for the Town of Simsbury (the “Sisk Affidavit”) – Respondents’ Exhibit 4 (after-filed).⁵

Case #23-38758 Request

32. At the hearing on this matter, the complainant testified, and it is found, that the respondents ultimately responded to the Case #23-38758 Request and provided her with a copy of the police report concerning the arrest of Andrew Bonee (the “Bonee Police Report”); however, she contended that the respondents failed to provide her with the Bonee Police Report in a timely manner. The respondents disputed the complainant’s contention.

33. With regard to whether the respondents acted promptly in responding to the Case #23-38758 Request, this Commission has previously opined that the word “promptly” in §1-210, G.S., means

⁵ On December 19, 2024, the complainant responded to the Chief’s Affidavit and the Sisk Affidavit, specifying several other requests that she had submitted to the respondents and alleging that the respondents did not promptly respond to such requests. However, it is found that such requests were not alleged in the complaint and that the Commission therefore lacks jurisdiction over them. The complainant also claimed that the respondents’ “fulfillment of many requests are received months after the request.” The Commission, likewise, lacks the authority to consider such generalized claims. With respect to claims concerning the denial of the right to inspect or copy records promptly, the Commission has jurisdiction only over appeals that are filed within thirty days of the denial of such right. In addition, the complainant requested in her December 19, 2024 response that the Commission “fine [the respondents] to the full extent of the law.” This contention was not raised in the complaint or at the hearing on this matter. Moreover, since there are no violations of the FOI Act by the respondents in this matter, no civil penalty is warranted.

quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the records; 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 loss of the personnel time involved in complying with the request.

See FOI Commission Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk (Jan. 11, 1982) (“Advisory Opinion #51”).

34. The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

35. In *Commissioner of Dept. of Emergency Servs. and Public Protection v. Freedom of Info. Comm'n*, HHB-CV-18-6047741, 2020 WL 5540637, *6 (Conn. Super. Ct. July 2, 2020), the court recognized that a public agency should consider its obligations under the FOI Act as a “primary duty” of that agency, “on par with the [agency’s] other significant duties, or said another way, that the agency’s FOI [Act] duty is not a second class duty.”

36. At the hearing on this matter, the chief of the respondent police department (the “Chief”) testified on behalf of the respondents.

37. Based upon the Chief’s testimony, as of the date of the hearing on this matter, it is found that the respondents had fulfilled 855 records requests from a variety of sources in 2024.

38. The Chief testified, and it is found, that three clerks of the respondent police department’s records division (the “Records Division”) process all FOI Act requests that are submitted to the respondents, except for requests for personnel records, which the Simsbury Town Manager’s office processes.

39. The Chief testified, and it is found, that the respondents generally have a policy of satisfying FOI Act requests on a “first-in-first-out” basis, but they also prioritize requests based upon various factors such as whether a crime victim, the accused, an attorney or an insurance company made the request or whether the records were required for civil, criminal or juvenile proceedings.

40. It is found that the Records Division records each FOI Act request in the respondents’ internal system, assigns each request an incident number, records the date each request is received, typically responds in writing to each request within four business days and provides the requester with an estimated date of completion based, in part, on other work of the Records Division, which includes preparing court paperwork, providing responses to subpoenas, processing pistol permit applications, responding to requests from the Department of Children and Families, the Department of Correction and other government and law enforcement agencies, attending to requests for background checks, attending trainings, providing documents

and evidence to sworn personnel, among other duties.

41. It is found that the Records Division has a substantial workload, is understaffed, and has a backlog with respect to several responsibilities and duties.

42. As found in paragraph 12, above, the respondents informed the complainant on December 21, 2023 that based on their workload and staffing, the respondents estimated that they were unable to fulfill the Case #23-38758 Request until February 29, 2024 or shortly thereafter.

43. It is found that the respondents provided the complainant with a copy of the Bonee Police Report on June 7, 2024.

44. It is found that the complainant is a prolific requester for records. It is found that over the course of 2023 and 2024, the complainant submitted a total of 197 records requests. Specifically, it is found that the complainant submitted ninety requests to the respondents between June 14, 2023 and December 6, 2023 and forty-five requests between January 1, 2024 and June 3, 2024.

45. It is found that, by email dated September 29, 2023 and received on October 2, 2023, the complainant requested that the respondents provide her with " ... all -A44 Forms included in all DUI arrests from January 2022 to the present." It is found that such request required the Records Division to create a list of all relevant cases in the almost two-year time frame, which involved sixty separate DUI arrests, and then reviewing the court case status in the respondent police department's system and/or Connecticut Judicial public case-lookup website, accessing each responsive file to locate each A-44 form. It is found that, thereafter, the Records Division had to copy, redact, and scan each A-44 form prior to emailing it to the complainant. It is found that, as a result, several of the complainant's requests were still pending at the time of the Case #23-38758 Request.

46. It is found that respondents had several in-person conversations with the complainant regarding the time needed to fulfill her requests and the agreed upon plan to fulfill arrests first, starting with the DUI arrests.

47. Considering all of the factors, it is found that the respondents promptly complied with the Case #23-38758 Request.

48. Accordingly, it is concluded that the respondents did not violate the promptness requirements of §§1-210(a) and 1-212(a), G.S., under the facts and circumstances of this case.

Case # 23-41050 Request

49. At the hearing on this matter, the complainant testified, and it is found, that the respondents ultimately complied with the Case # 23-41050 Request and provided her with a copy of the police report concerning the incident at 133 Holcomb Street (the "Holcomb St. Police Report"); however, she contended that the respondents failed to provide her with the Holcomb St. Police Report in a timely manner.

50. At the hearing on this matter and in their post hearing brief, the respondents contended that, at the time of the complainant's Case # 23-41050 Request, the Holcomb St. Police Report was exempt from disclosure pursuant to §1-210(b)(3)(D), G.S., and therefore they had no duty to disclose such report at the time of the request.

51. Section §1-210(b)(3)(D), G.S., provides that disclosure is not required of:

[r]ecords of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of such records would not be in the public interest because it would result in the disclosure of ... (D) information to be used in a prospective law enforcement action if prejudicial to such action

52. In *Drumm v. Freedom of Info. Comm'n*, 348 Conn. 565, 590 (2024) ("Drumm"), the Connecticut Supreme Court concluded that:

the legislature intended the law enforcement exception to apply only when a law enforcement agency is able to make the threshold showing that an arrest or prosecution is at least reasonably possible. It need not be probable or likely, but it must be more than only remotely or theoretically possible. This standard effectuates the legislative intent of providing open access to public records without unduly hamstringing ongoing investigations.

53. The court, in *Drumm*, also emphasized that:

the respondents [bear] the burden before the commission of establishing not only that there was a reasonable possibility that the investigation will result in a law enforcement action, but also that, for each individual document or set of documents sought to be withheld, it is reasonably possible that the requested files contain information that will be used in such a law enforcement action and that disclosure of that information would be prejudicial.

Drumm, 348 Conn. at 601.

54. At the hearing on this matter, the Chief testified, and it is found, that the Holcomb St. Police Report constituted police records of an investigation into a criminal complaint, which was ongoing at the time of the complainant's Case # 23-41050 Request.

55. The Chief testified, and it is found, that the investigation into the criminal complaint described in paragraph 54, above, was completed on June 12, 2024 and the respondents provided the complainant with the Holcomb St. Police Report on June 18, 2024.

56. In the Chief's Affidavit, the Chief averred, and it is found, that the respondents received an anonymous tip on December 22, 2023 regarding reckless driving with enough information to begin an investigation. It is found that the investigation yielded videos of

dangerous driving that was unlawful and potentially criminal. It is further found that the respondents conducted further investigation and interviews that may have led to arrest(s) for reckless driving/behavior, both under the motor vehicle and criminal statutes.

57. The Chief also averred, and it is found, that the disclosure of the records of this open investigation at the time of the request could have led to the destruction or editing of potential evidence.

58. Based upon the foregoing, it is found that the Holcomb St. Police Report was a record of a law enforcement agency not otherwise available to the public, which was compiled in connection with the detection or investigation of crime.

59. It is found that, at the time of the Case # 23-41050 Request, an arrest or prosecution was at least reasonably possible.

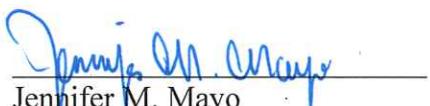
60. It is also found that it is reasonably possible that the disclosure of the Holcomb St. Police Report, at the time of the request, would have been prejudicial to any such prospective law enforcement action. Consequently, it is found that the Holcomb St. Police Report was exempt from disclosure at the time of the request pursuant to §1-210(b)(3)(D), G.S.

61. Accordingly, it is concluded that the respondents did not violate §§1-210(a) and 1-212(a), G.S., by withholding from the complainant access to the Holcomb St. Police Report, which was exempt from disclosure pursuant to §1-210(b)(3)(D), G.S., at the time of the request, and was provided to the complainant very soon after the investigation was completed.⁶

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

1. The complaint is hereby dismissed.

Approved by Order of the Freedom of Information Commission at its regular meeting of January 8, 2025.



Jennifer M. Mayo

Acting Clerk of the Commission

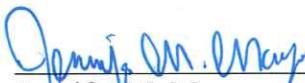
⁶ As found in paragraph 55, above, although the Holcomb St. Report was exempt from disclosure, the respondents nonetheless provided such report to the complainant after they closed the investigation, without requiring the complainant to submit a new request, which technically would have been required under the FOI Act.

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:

JOAN COE, 26 Whitcomb Drive, Simsbury, CT 06070

TOWN MANAGER, TOWN OF SIMSBURY; TOWN OF SIMSBURY; CHIEF, POLICE DEPARTMENT, TOWN OF SIMSBURY; AND POLICE DEPARTMENT, TOWN OF SIMSBURY, c/o Attorney Robert M. DeCrescenzo, Updike, Kelly & Spellacy, P.C., Goodwin Square, 225 Asylum Street, 20th Floor, Hartford, CT 06103



Jennifer M. Mayo
Acting Clerk of the Commission