

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Keith Massimino,

Complainant

against

Docket #FIC 2024-0360

Chief, Police Department, Town of
Wallingford; Police Department, Town of
Wallingford; and Town of Wallingford,

Respondents

June 11, 2025

The above-captioned matter was heard as a contested case on November 26, 2024, at which time the complainant and respondents appeared 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. It is found that on March 26, 2024, the complainant requested the following records from the respondents:

[Personnel] records and files for Officer Willie Belton.

All records pertaining to any subsequent investigation for the [motor vehicle] accident on Sept. 25th 2021 involving Officer Belton.
3. Although the respondents did not present testimony or evidence regarding their acknowledgment of the March 26 request, it is found that they received the request that same day and, on May 6, 2024, informed the complainant that records responsive to his request were available to be picked up.
4. It is found that by May 7, 2024, the complainant had picked up the records provided by the respondents, which consisted of a redacted internal affairs investigation report pertaining to the accident referenced in paragraph 2, above (hereinafter "IA #2021-0041").
5. It is found that the following occurred on May 7, 2024:

- a. the complainant emailed the respondents expressing concern over the redactions made to IA #2021-0041;
- b. the complainant requested that the respondents review the report again and confirm their redactions; and
- c. the respondents replied to the complainant confirming their redactions and explaining that such redactions were due to the report containing uncorroborated allegations and information pertaining to erased criminal charges.

6. By letter of complaint received and filed on June 20, 2024¹, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (“FOI”) Act, by failing to provide an unredacted copy of IA #2021-0041.²

7. 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.

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

¹ The Commission notes that the complaint indicates that the last correspondence between the complainant and respondents concerning the request occurred on June 10, 2024 and, therefore, the complaint is timely filed pursuant to §1-206(b)(1), G.S.

² After reviewing IA #2021-0041, the complainant followed up with the respondents concerning body camera footage referenced therein. The respondents initially withheld the body camera footage pursuant to §29-6d(g)(1), G.S., which in relevant part prohibits police officers from intentionally recording a person undergoing a medical or psychological evaluation, procedure or treatment, and any other person other than a suspect to a crime in a hospital or other medical facility. Prior to the November 26, 2024 hearing in this matter, the respondents agreed to provide the complainant with the audio portion of the relevant body camera footage, and the complainant withdrew his claims with respect to such footage.

9. 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.”

10. It is concluded that the sole record at issue before the Commission in this matter, IA #2021-0041, is a public record within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that on November 22, 2024, the respondents’ counsel and the complainant discussed the redactions made to IA #2021-0041. It is found that as a result of this conversation, respondents’ counsel conducted an additional review of IA #2021-0041 to determine whether such redactions were proper.

12. It is found that upon re-reviewing the redactions made to IA #2021-0041, respondents’ counsel identified several portions of the report that “should not be redacted.”³ It is found that respondents’ counsel removed some of the redactions made to IA #2021-0041 and sent a “corrected” version of the report to the complainant.

13. On February 18, 2025, the respondents submitted the records at issue to the Commission for in camera inspection. The in camera records consist of one unredacted copy of IA #2021-0041, totaling 10 pages. The in camera records shall be referred to as IC-2024-0360-1 through IC-2024-0360-10.

14. On the Index to Records Submitted for In Camera Inspection (“Index”), the respondents identified the following portions of IA #2021-0041 which they contend are exempt from disclosure pursuant to §54-142a, G.S.:

- a. IC-2024-0360-1 [lines 5 (after “2021,”) through 7; 16 (after “did.”) through 18]
- b. IC-2024-0360-2 [lines 33 (up to “to Officer Belton”); 34 (after “explaining” and up to “to Black”); 35 (after “argumentative.”) through 37 (up to “As that”)]
- c. IC-2024-0360-3 [lines 40 (after “conversation.”) through 41]
- d. IC-2024-0360-4 [lines 2 through 5]
- e. IC-2024-0360-6 [lines 28 (after “phone.”) through 35]⁴

³ Specifically, respondents’ counsel indicated that “[t]here were redactions relating to the sick leave issue that should not be redacted.” At the hearing, the respondents testified that several portions of IA #2021-0041 relating to Officer Belton’s use of sick leave were redacted because such issues purportedly were uncorroborated. Although the respondents ultimately removed such redactions, the Commission notes that to the extent the respondents made such redactions pursuant to §1-210(b)(3)(H), G.S., such redactions were improper. See Docket #FIC 2022-0590, Meghan Friedmann et al. v. Chief, Police Department, Town of Old Saybrook et. al. (September 27, 2023) (Friedmann”).

⁴ The Commission notes that the sentence ending on line 35 of IC-2024-0360-6 continues onto lines 2 through 3 of IC-2024-0360-7. While the respondents redacted lines 2 through 3 of IC-2024-0360-7 in the version of IA# 2021-

- f. IC-2024-0360-7 [lines 18 through 24]
- g. IC-2024-0360-8 [lines 9 through 20; 22 through 27]
- h. IC -2024-0360-10 [line 7].

15. Section 54-142a, G.S., known as “the erasure statute,” generally requires nondisclosure of all police, court, and prosecutorial records “pertaining to a criminal charge” whenever a person charged of a crime is acquitted or pardoned, or the charge is dismissed or nolle.

16. In Comm’r. State of Connecticut Dept. of Emergency Services and Public Protection v. Freedom of Info Comm’n, HHB-CV14-602708-S, 2019 WL 4201551, (Aug. 20, 2019), the court concluded that, when a charge is subject to erasure pursuant to §54-142a, G.S., that does not necessarily mean that all law enforcement records from the underlying incident or investigation are barred from disclosure. Instead, only records “pertaining to [a] charge” that results in a dismissal, nolle, or acquittal are deemed erased pursuant to §54-142a, G.S. Similarly, pursuant to §54-142a(e)(1), G.S., law enforcement agencies are only prohibited from disclosing “information pertaining to any charge erased under any provision of [§54-142a, G.S.]. Moreover, the court analyzed the phrase “pertaining to [an erased] charge” and concluded that §54-142a, G.S., prohibits the disclosure of “‘descriptive information’ that discloses when or where a person was arrested, the nature of or circumstances surrounding the crime charged or the names of witnesses from whom further information may be obtained.” (quoting State v. West, 192 Conn. 488, 496 (1984)).

17. The respondents testified, and it is found, that IA #2021-0041, contains information that pertains to a criminal charge against an individual that was dismissed in December 2021. Accordingly, the Commission must determine whether the redacted portions of IA #2021-0041, identified in paragraph 14, above “pertain” to that criminal charge within the meaning of §54-142a, G.S.

18. After careful examination of the in camera records, it is found that all portions of such records identified in paragraph 14, above, with the exception of lines 18 through 24 of IC-2024-0360-7, pertain to an erased charge within the meaning of §54-142a, G.S.

19. It is therefore concluded that the portions of the in camera records described in paragraph 14, above, with the exception of lines 18 through 24 of IC-2024-0360-7, are exempt from disclosure, and the respondents did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding them.

20. With respect to lines 18 through 24 of IC-2024-0360-7, it is found that such portions of the in camera records do not pertain to the underlying erased charge, but rather relate solely to the respondents’ internal affairs investigation. See Docket #FIC 2022-0590, Friedmann (“The Commission has long held that internal affairs investigation records are not records compiled in

0041, provided to the complainant, they did not claim such redactions on the Index. It is found that the respondents inadvertently excluded lines 2 through 3 of IC-2024-0360-7 on the Index. The Commission therefore considers such portions of the in camera records as if claimed on the Index.

connection with the detection or investigation of crime, but rather concern a non-criminal internal investigation of alleged violations of administrative regulations.”)

21. Accordingly, it is concluded that lines 18 through 24 of IC-2024-0360-7 are not exempt from disclosure pursuant to the erasure statute and the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by withholding them.

22. The complainant also alleges that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S. Specifically, the complainant takes issue with the time it took the respondents to provide him with a less-redacted copy of IA #2021-0041, after he expressed his concerns about such redactions.

23. 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.”

24. 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.

25. As noted in paragraph 5, above, the complainant expressed concerns about the redactions made to IA #2021-0041 shortly after picking up the records on May 7, 2024.

26. It is found that although the respondents replied to the complainant that same day, they only reiterated their basis for redacting certain portions of IA #2021-0041, and did not conduct a substantive review of such redactions; and the respondents did not do so until November 22, 2024, after the complainant’s conversation with respondents’ counsel, four days before the hearing in this matter.

27. It is found that upon reviewing the IA #2021-0041, respondents’ counsel quickly identified that several portions of the report were improperly redacted and sent the complainant a revised version.

28. Although the respondents did ultimately provide the complainant with a less redacted copy of IA #2021-0041, it is found that by not conducting a substantive review of the redactions when the complainant first expressed concerns, the production of records was partially delayed by almost 200 days (i.e., from May 7, 2024, to November 22, 2024).

29. It is found that had the respondents conducted a substantive review of the redactions when the complainant first expressed his concerns, the respondents could have readily identified

the improper redactions and provided the complainant with the less-redacted version of IA #2021-0041 far sooner than November 22, 2024.⁵

30. Based on the facts and circumstances of this case, it is found that the respondents were not prompt in providing the complainant with all non-exempt records responsive to his March 26 request.⁶

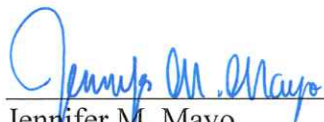
31. It is therefore concluded that the respondents violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

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 Notice of Final Decision in this matter, the respondents shall provide the complainant with a copy of IA #2021-0041 free of charge, with lines 18 through 24 of IC-2024-0360-7 unredacted.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of June 11, 2025.



Jennifer M. Mayo
Acting Clerk of the Commission

⁵ The Commission also notes that had the complainant not expressed his concerns regarding the redactions to IA #2021-0041, it is likely that the improper redactions contained therein would have never been identified and corrected.

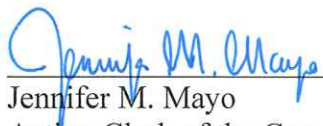
⁶ The Commission recognizes that respondents' counsel acted promptly in disclosing the less-redacted copy of IA #2021-0041 once she identified the improper redactions.

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:

KEITH MASSIMINO, 39 Calhoun Road, Wallingford, CT 06492

CHIEF, POLICE DEPARTMENT, TOWN OF WALLINGFORD; POLICE DEPARTMENT, TOWN OF WALLINGFORD; AND TOWN OF WALLINGFORD, c/o Attorney Janis M. Small, Corporation Counsel, 45 South Main Street, Wallingford, CT 06492



Jennifer M. Mayo
Acting Clerk of the Commission