

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert A. Cushman,

Complainant

against

Docket # FIC 2024-0594

Ronnell A. Higgins, Commissioner, State of
Connecticut, Department of Emergency
Services and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

September 10, 2025

The above-captioned matter was heard as a contested case on March 7, 2025, and May 16, 2025, at which times the complainant and the 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, by hand-delivered letter dated November 6, 2023, the complainant requested from the respondents the following records connected with a September 2, 2023 incident involving Jaden Yost, case number 2300352828 (hereinafter “November 2023 request”):
 - (a) Records, reports, audio, video, digital recordings, body-cam videos, photographs (including but not limited to black and white and color); documentation; test results; tapes; transmission; transcriptions; broadcasts; notes; statements; and recordings for the defendant in this matter[, Jaden Yost].
 - (b) [Records,] including but not limited to all: incident reports, A-44 and any attachments; blotter; arrest warrant application and any affidavit in support of such warrant; body-cam video, digital recording, and telephone logs of or in the barracks, garage, sally port, booking room and processing room; MVR with audio; mobile video and audio; recordings involving third party’s contacts or attempts to contact the defendant; audio and digital recordings; transmission of metadata; dashboard audio ...CD’s; video, digital, and audio recordings, including all officer contacts with the dispatch; telephone recordings;

statements of the defendant; property seized; telephone calls reporting or informing of this incident; dispatcher recordings and tapes; handwritten and typewritten notes; rough notes and field notes transcribed by any officer; any other notes; all records relating to any device used in transmitting and/or receiving, to any cell phone examination, and to any testing device; results of any and all testing; and all evidence and inventory logs.

3. It is found that, along with his November 2023 request, the complainant provided the respondents a check for \$16.00 to satisfy the statutory fee¹ for such request.

4. It is found that, on November 7, 2023, via the online GovQA portal,² the complainant received the following items from the respondents:

- (a) a GovQA account creation notice, which provided an account login ID; the phone number for the respondents' Reports and Records unit; and an explanation of how to use the portal to track the request's status;
- (b) an acknowledgment of his November 2023 request, which included a request reference number assigned by the respondents: R001954-110723; and
- (c) an electronic receipt for his \$16.00 payment described in paragraph 3, above.

5. It is found that, on August 9, 2024, 277 days after acknowledging the complainant's November 2023 request, the respondents uploaded to GovQA records that consisted of only a partial response to the request.

6. It is further found that, later that same day on August 9, 2024, the complainant replied to the respondents via GovQA messaging. In such message, the complainant requested missing body-worn camera ("BWC") video and the dash cam video responsive to his November 2023 request. It is found that the respondents did not acknowledge the message from the complainant.

7. It is found that, on September 16, 2024, via GovQA messaging, the complainant sent the respondents another reminder, requesting that the respondents forward to him the "body cam and MCR dash cam videos" related to his November 2023 request that had not been provided. It is found that the respondents again did not acknowledge this message from the complainant.

¹ Section 29-10b, G.S., provides as follows: "The Commissioner of Emergency Services and Public Protection shall charge the following fees for the item or service indicated: (1) Each search of the record files made pursuant to a request for a copy of an accident or investigative report which results in no document being produced, sixteen dollars. (2) Each copy of an accident or investigative report, sixteen dollars."

² GovQA is a web-based public records management system utilized by the respondents.

8. It is further found that, also on September 16, 2024, the complainant sent a renewed request to the respondents by letter via U.S. mail. It is found that the complainant clearly stated in such letter that the recorded audio and video of the Panasonic Arbitrator in-car and BWC system were not among the records disclosed by the respondents on August 9, 2024. It is found that, specifically, the new request sought, for a second time, electronic copies of the following records connected with a September 2, 2023 incident involving Jaden Yost, case number 2300352828: “all of the audio, video, digital recording, body-cam videos, photographs (including but not limited to black and white and color); 9-1-1 and dispatch recordings for this matter” (hereinafter “September 2024 request”).

9. It is found that, on September 20, 2024 through an email from the GovQA portal, the respondents acknowledged the complainant’s September 2024 request and provided a new reference number for such request: F001374-092024.

10. It is found that, on September 23, 2024, the respondents messaged the complainant through the GovQA portal to inform him that they completed the search for records responsive to his September 2024 request, found no responsive audio or video recordings, and determined that no records were seized as evidence. It is further found that the respondents stated in such message that their records retention policy is one year for audio recordings and ninety days for video recordings.

11. By email, received and filed by the Commission on September 25, 2024, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide him with copies of records responsive to his September 2024 request. The complainant initially requested that the Commission consider imposing civil penalties upon the respondents but later withdrew such request at the May 16, 2025 contested case hearing.

12. Section 1-200(5), G.S., provides the following:

“[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.

13. Section 1-210(a), G.S., provides the following 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 section 1-212.

14. 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.”

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

Scope of the Complaint

16. At the first contested case hearing, the complainant contended that his November 2023 request is within the scope of the complaint in the above-captioned matter, as it constituted his initial request for the records at issue.

17. Conversely, the respondents contended at the first hearing that the complainant’s November 2023 request should not be considered by the Commission in the instant matter. Specifically, the respondents contended that such request was not the subject of the complaint described in paragraph 11, above, because such complaint expressly stated: “Date of Record Request: September 16, 2024” and because the complainant attached the September 2024 request, but not the November 2023 request, to such complaint.

18. Regarding such arguments from the parties regarding the scope of the complaint, it is found that the complainant sent electronic messages to the respondents to inform them that their August 9, 2024 disclosures, described in paragraph 5, above, to his November 2023 request were incomplete. It is found that the complainant sent these messages via the GovQA portal on August 9, 2024 and September 16, 2024, as described in paragraphs 6 and 7, above.

19. It is further found that the complainant also attempted to inform the respondents a third time, via U.S. mail, that their August 9, 2024 disclosures were incomplete. Specifically, it is found that the complainant mailed a letter to the respondents dated September 16, 2024, which was clearly marked as a revived attempt to obtain the remaining records responsive to his November 2023 request. It is found that the complainant labeled such letter, “**SECOND REQUEST RE: R001954-110723**,” underlined and printed in boldface type directly below the letterhead and date. It is further found that the first sentence of the complainant’s letter reads as follows: “This letter is a follow-up to an original FOI request dated November 6, 2023 with your Reference No. R001954-110723, to obtain, in connection with the above-referenced matter, ...copies of certain records in the above-referenced matter.”

20. It is found that, of the complainant’s three requests to obtain missing records, described in paragraphs 18 and 19, above, the respondents issued a written acknowledgment only for the complainant’s September 2024 request letter described in paragraph 19, above. It is further found that respondents’ assignment of a new reference number to such letter, F001374-092024, indicates that they viewed such letter as a separate request from the complainant’s November 2023 request.

21. It is found that the complainant's September 2024 request letter is substantially similar to his November 2023 request: it names specific records that also appear in the November 2023 request and renews his request for the respondents to disclose them.

22. Given the foregoing, and despite the respondents' internal decision to treat the complainant's September 2024 request as separate and distinct from his original November 2023 request, it is found that the November 2023 request constitutes the initial request at issue in the above-captioned matter; is not separate and distinct from the September 2024 request; and, therefore, is within the scope of the complaint.

Search for and Provision of Responsive Records

First Contested Case Hearing – March 7, 2025

23. At the first contested case hearing, the complainant contended that he did not know whether the respondents sufficiently searched for records responsive to his November 2023 and September 2024 requests, whether such records still exist, and whether the respondents were complying with the statutorily-required retention schedule for such records.³ Specifically, the complainant represented that he had not received the following requested records: audio and video from Panasonic Arbitrator in-car and BWC systems, photographs, and 9-1-1 and dispatch recordings.

24. As already found in paragraph 2, above, the complainant did not utilize the respondents' GovQA portal to submit his November 2023 request; rather, the complainant hand-delivered such request and a \$16.00 check to the respondents at a window located on the first floor of their agency headquarters, located in Middletown, Connecticut. It is further found that the complainant had prior experience hand-delivering FOI requests to the respondents in this manner.

25. It is found that the respondents entered the complainant's November 2023 request into their GovQA portal, as evidenced by the electronic messages received by the complainant, described in paragraph 4, above.

26. It is found that, despite the fact that the complainant hand-delivered his November 2023 request to the respondents, respondents' counsel posed a series of questions to him on cross-examination regarding whether the complainant was aware of notices on the GovQA portal instructing requestors to submit requests for audio and video to the respondents' Legal Affairs unit and to submit requests for records to the respondents' Reports and Records unit. It is found that the complainant was not aware of such notices.

27. The FOI Act does not require requestors to submit written requests for records to a public agency in any particular medium other than "in writing" as stated in §1-212(a), G.S.; nor

³ The Commission notes that it does not have jurisdiction over a public agency's compliance with statutorily-prescribed or internally-adopted agency records retention requirements or policies. Accordingly, such issue will not be further addressed herein.

does the Act require such request to be submitted via any particular delivery system, such as by post or electronically.

28. Therefore, it is found that the complainant has no obligation under the FOI Act to familiarize himself with postings on the respondents' online GovQA portal. It is further found that the complainant properly submitted his November 2023 request to the respondents.

29. The respondents' paralegal specialist from their Legal Affairs Unit testified at both contested case hearings on behalf of the respondents.

30. It is found that, at the first contested case hearing, the respondents' witness was unable to testify to the nature of the search conducted in response to the complainant's November 2023 request. She testified that she was unaware of his November 2023 request because that reference number had not been assigned to her for completion, but rather to agency staff in the respondents' Reports and Records unit.

31. It is further found that the respondents assigned a reference number beginning with the letter "R" to the complainant's November 2023 request. It is found that the respondents internally understood this "R" prefix to indicate that such request was being handled by the respondents' Reports and Records unit. It is found that the respondents did not explain the significance of this prefix to the complainant prior to the first contested case hearing.

32. It is found that the respondents did not provide any evidence at the first contested case hearing regarding the nature of their search for records responsive to the complainant's November 2023 request and, in particular, any attempt to search for the audio and video from arbitrator in-car and BWC systems, photographs, or 9-1-1 and dispatch recordings. At such hearing, counsel for the respondents represented that she did not bring a witness to testify to such search because she was unaware that the November 2023 request was at issue in the above-captioned matter.

33. It is found that the respondents assigned a reference number beginning with the letter "F" to the complainant's September 2024 request. It is found that the respondents internally understood this "F" prefix to indicate "FOI request" that will be handled by the respondents' Legal Affairs unit. It is found that the respondents did not explain the significance of this prefix to the complainant prior to the first contested case hearing.

34. It is found that the respondents' witness testified at the first contested case hearing that the different "R" and "F" prefixes indicate that the November 2023 and September 2024 requests were being handled by two separate and distinct "offices and systems," and also that the respondents were treating them as two separate requests.

35. It is found that the FOI Act does not obligate the complainant to familiarize himself with the meaning behind abbreviations internally assigned by the respondents to his records requests.

36. It is found that, at the first contested case hearing, the respondents' witness testified to the nature of the search that she personally conducted for records responsive to the complainant's September 2024 request.

37. It is found that in her search for records responsive to the complainant's September 2024 request, the respondents' witness first attempted to determine whether the agency had any previous requests from the complainant, given that the September 2024 request contained the phrase "second request." The respondents' witness testified that she was unable to find any previous request for the complainant in relation to the September 2024 request reference number or call for service ("CFS") number⁴ related to that request. It is found that the respondents did not provide any evidence, however, to explain why their witness was unable to use the reference number for the November 2023 request, which the complainant cited in his September 2024 request, to look up, locate, and compare the two requests.

38. It is found that the respondents' witness conceded that "a mistake was probably made" in the respondents' processing of the complainant's November 2023 request that prevented her from locating it when she began her search for records responsive to his September 2024 request.

39. Regarding the respondents' search for any video footage responsive to the complainant's September 2024 request, the respondents' witness testified, and it is found, that she used the CFS number in the September 2024 request to search the respondents' Unified Digital Evidence ("UDE") server. It is found that video recordings, such as BWC and dash camera footage, are typically stored on the UDE. It is found that she also ran a more advanced search of the UDE using the date and time of the incident and the name of the responding state trooper and did not find any responsive video in the UDE. It is further found that she also went into NextGen, the respondents' computerized records management system, to determine whether any responsive emails were received as evidence or were attached to the state trooper's report of the related incident, but she did not locate any responsive records.

40. Regarding the respondents' search for any audio records responsive to the complainant's September 2024 request, including 9-1-1 and dispatch audio, it is found that the respondents' witness did not reach out to the respondents' message center that maintains such records. In her testimony, the witness noted that, at the time the agency received and acknowledged the request on September 20, 2024, it was more than one year after the September 2, 2023 incident occurred. It is found that the respondents' witness was confident that the respondents did not maintain any responsive audio records, based upon her knowledge of the agency's one-year retention policy for audio records, even though she failed to conduct a search for such records.

41. Regarding the respondents' search for any photographs responsive to the complainant's September 2024 request, the respondents' witness testified, and it is found, that she searched NextGen and did not find any photographs that were part of the trooper's report. It

⁴ The respondents' witness testified that a CFS number is generated any time a state trooper is dispatched to a call and is akin to a case number or incident number.

is found that the respondents' witness believed that responsive photographs were not maintained in any other place, based upon the fact that there was only one CFS number and one report in NextGen regarding this incident.

42. By order of the undersigned hearing officer, the matter was then continued for a second hearing to allow the parties to present additional evidence.

Second Contested Case Hearing – May 16, 2025

43. At the second contested case hearing, the respondents' paralegal specialist testified, and it is found, that the respondents' Reports and Records unit entered the complainant's November 2023 request into GovQA but never transferred the audio/video portions of such request to the Legal Affairs unit where she is employed.

44. The respondents' witness further testified, and it is found, that after the first contested case hearing, she conducted additional searches for responsive records at the direction of the respondents' Legal Director. It is found that, on May 1, 2025, the respondents' witness contacted the respondents' Message Center to confirm the respondents' audio records retention policy and to determine whether its commanding officer had received any requests for such records. It is found that the officer confirmed that the retention policy is one year, unless a previous request has been made for such audio records before the one year has expired. It is further found that the officer did not have a record of any such requests for audio related to the CFS at issue having been made.

45. It is found that the respondents' Legal Affairs unit may have been able to retain any audio footage responsive to the complainant's November 2023 request if their Records and Reports unit had promptly transferred such request to them soon after the complainant had submitted it.

46. It is further found that, on May 1, 2025, the respondents' witness contacted the respondents' Information Technology ("IT") department to determine the status of the video footage generated from the BWC activated by the troopers responding to the CFS related to this matter. It is found that the respondents' witness provided IT with the serial numbers and BWC serial numbers of the three troopers who responded to the CFS (hereinafter "responding troopers"). It is found that, based upon those sets of numbers, the respondents' IT staff were able to determine that the BWC footage from the date of the CFS, September 2, 2023, did at some point exist. It is further found that IT staff provided the respondents' witness with charts containing the following information for each responding trooper's BWC footage from September 2, 2023: the trooper's name; the date and time each BWC video was purged; the location to which the BWC video was moved (i.e., "auto trash can delete"); and the results of the movement (e.g., "success[ful]" movement to the trash can). It is found that such chart indicated that the responding troopers' BWC footage was automatically deleted by the respondents 90 or more days after the date it was uploaded to the respondents' storage system. It is found that the deletion dates of the responsive BWC footage ranged from December 15, 2023 to December 25, 2023.

47. The respondents' witness further testified, and it is found, that the respondents' Legal Affairs unit would have been able to retain the BWC footage responsive to the complainant's November 2023 request, described in paragraph 46, above, if their Records and Reports unit had promptly transferred such request to them soon after the complainant had submitted it.

48. It is further found that, on May 2, 2025, the respondents' witness contacted the Troop A Evidence Officer to determine whether he had received any requests, such as from the Office of the State's Attorney, for any audio or video records related to the CFS number provided by the complainant in his requests at issue. It is found that the respondents' Evidence Officer had no record of any such request being made.

49. Given the findings in paragraphs 24 through 48, above, it is found that the respondents did not conduct a timely and thorough search for records responsive to the complainant's November 2023 and September 2024 requests. It is found that the timeliness of such search was impeded by internal processing mistakes made by the respondents. It is further found that such mistakes led to the purge of some responsive BWC footage that the respondents maintained at the time of the complainant's initial November 2023 request.

50. Given the findings in paragraphs 10, 40, and 48, above, it is found that the respondents initially did not conduct a thorough search for audio responsive to the complainant's November 2023 and September 2024 requests. It is found that the respondents did not perform an inquiry with the Troop A or message center that maintained audio records prior to informing the complainant that such records did not exist.

51. The respondents have conceded, and it is concluded, that they violated §§1-210(a) and 1-212(a), G.S., by failing to provide the BWC footage or audio records described in paragraphs 2 and 9, above.

Promptness

52. Regarding the issue of promptness, 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 (Notice of Final Decision dated January 11, 1982) ("Advisory Opinion #51"), the Commission opined that the word "promptly," as used in the FOI Act, means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Advisory Opinion provides that some of the factors to be considered are (i) the volume of records requested, (ii) the amount of personnel time necessary to address the request, (iii) the timeframe under which the requestor needs the information, (iv) the importance of the records to the requestor, (v) time constraints placed on the agency by other work, and (vi) the importance of other pressing work at the agency. Additionally, the Commission offered the following guidance:

[p]roviding such access is therefore a primary duty of all public agencies and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its

responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

53. Additionally, as the Court recognized in Commissioner of Department of Emergency Services and Public Protection v. Freedom of Information Commission, 70 Conn. L. Rptr. 203, *3 (July 2, 2020), 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 FOIA duty is not a second-class duty.”

54. It is found that the respondents failed to proffer any evidence to explain their 277-day response time to the complainant’s initial November 2023 request described in paragraph 5 above. Rather, the respondents’ witness testified that the staff member processing the request in the Reports and Records unit was a new employee in the unit with “maybe...a couple weeks with the [respondent] agency.”

55. It is further found that the respondents failed to prove that any of the other factors contemplated by the Commission in Advisory Opinion #51 (e.g., the volume of records requested, pressing agency workload, or personnel time required to respond) impacted their ability to respond “promptly” to the complainant’s November 2023 request.

56. It is found that the respondents failed to respond to several of the complainant’s good faith attempts, described in paragraphs 6 and 7, above, to maintain the active status of his November 2023 request through the subsequent ten months leading up to the September 25, 2024 filing of his complaint in the above-captioned matter.

57. It is found that the respondents’ actions in processing the complainant’s November 2023 request, described in paragraphs 54-56, above constituted “undue delay” within the meaning of Advisory Opinion #51.

58. Upon consideration of all the factors presented with regard to the complainant’s request made on November 6, 2023, and resubmitted on September 16, 2024, it is found that the respondents failed to provide responsive records to the complainant “promptly” within the meaning of §§1-210(a) and 1-212(a), G.S.

59. Consequently, it is concluded that the respondents violated the promptness requirements set forth in §§1-210(a) and 1-212(a), G.S.

60. The Commission notes that, at the second contested case hearing, counsel for the respondents represented on the record that she informed the respondent commissioner of the events that came to light at the first contested case hearing, which resulted in internal conversations at the respondent agency. Counsel further represented that the respondents intended to take the following actions to remedy their FOI processing issues: a full review of the Reports and Records unit; a change in leadership in such unit; and a legal and process review of such unit by the Office of the Attorney General, which will then report its findings and

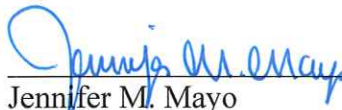
recommendations directly to the respondent commissioner and commanding officer of the unit. The Commission commends the respondent agency for taking such action.

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

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

2. Forthwith, the respondents shall arrange for an FOI training session to be conducted by staff of the Commission. The respondents shall forthwith contact the Commission to schedule such a training session.

Approved by Order of the Freedom of Information Commission at its regular meeting of September 10, 2025.



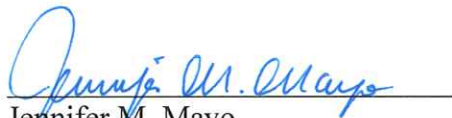
Jennifer M. Mayo
Acting Clerk of the Commission

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:

ROBERT A. CUSHMAN, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

RONNELL HIGGINS, COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Attorney Gwaina D Wauldon, Department of Emergency Services and Public Protection, 1111 Country Club Road, Middletown CT 06457


Jennifer M. Mayo
Acting Clerk of the Commission