

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2017-0090

Commissioner, State of Connecticut,
Department of Emergency Services
and Public Protection; and State of
Connecticut, Department of Emergency
Services and Public Protection,

Respondents

January 10, 2018

The above-captioned matter was heard as a contested case on May 4, 2017, 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. It is found that by letter dated January 26, 2017, the complainant made a request to the respondents for a copy of:

“all records, 911 calls, dispatch calls, reports, audio, videos, digital recordings, body-cam videos, photographs (including but not limited to black and white and color), documentation, tapes, transmissions, transcriptions, broadcasts, notes, statements, and recordings,”

for the defendant and all co-defendants in this matter, including but not limited to:

“all 911 recordings; video, audio; bodycam video of or in the barracks, garage, sally port, booking room and processing room; digital recordings of or in the barracks, garage, sally port, booking room and processing room; MVR with audio; mobile video; audio recordings;

dashboard audio; digital video; body-cam video; video recordings; CD's; video; digital; and audio recordings including all officer contacts with the dispatch; recordings involving third party's contacts or attempts to contact the defendant, Alan Caron, and/or co-defendants, in the police station; all recordings involving third party's contacts or attempts to contact the defendant, Alan Caron, and/or defendants, over the phone; statements of witnesses; statements of defendant, Alan Caron; statements of all co-defendants; property seized; telephone calls to/from the Connecticut State Police Department from/to any witness reporting or informing of this incident; dispatcher recordings; dispatcher tapes; handwritten notes; typewritten notes; any other notes, and rough notes transcribed by any officer."

3. By letter dated February 6, 2017 and filed on February 10, 2017, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply with his records request.

4. Section 1-200(5), G.S., provides:

"Public records or files" means any recorded data or information relating to the conduct of the public's business prepared, owned, used, received or retained by a public agency, or to which a public agency is entitled to receive a copy by law or contract under section 1-218, whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency, whether or not such records are required by any law or by any rule or regulation, shall be public records and every person shall have the right to (1) inspect such records promptly during regular office or business hours, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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."

7. It is found that the requested records, to the extent they exist and are maintained by the respondents, are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

8. It is found that by letter dated February 6, 2017, the respondents acknowledged the complainant's request.

9. It is found that by letter dated March 9, 2017, the complainant was provided with audio recordings and CAD notes. He was also informed that to the extent that there were video recordings, they would be forwarded to him as soon as they were forwarded to the respondent department by the troop that maintains them. The complainant was also informed that the statements he requested would be part of the investigation report, the fee for which, pursuant to §29-10b, G.S., is sixteen dollars. In addition, the complainant was informed that, to the extent they exist, any signed witness statements, other than his client's, would be withheld pursuant to the FOI Act. Finally, the complainant was informed that the search for the reports would begin when he remitted the sixteen dollar fee.

10. It is found that by letter dated April 10, 2017, the respondents provided the complainant with a copy of the video recordings responsive to his request.

11. It is found that by email dated May 1, 2017, the respondents confirmed: that they had provided the complainant with the audio and video recordings responsive to his request; that the fee for the investigation report had to be submitted prior to the search for such records commencing; and inquired as to whether there was any request outstanding because they believed they had fully complied with his request.

12. It is found that the respondents provided the complainant with all records responsive to his request that they maintain, except for the investigation report and photographs. It is found that, to the extent there are photographs, they would be part of, and included with, the investigation report, which report is maintained by the Report and Records Unit of the respondent department.

13. The respondents contended at the hearing in this matter that the search for the investigation report responsive to the complainant's request need begin only after he has paid the sixteen dollar fee required under §29-10b, G.S.

14. Section 29-10b, G.S., provides:

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.

15. It is found that the investigation report responsive to the complainant's request is an "accident or investigative report" within the meaning of §29-10b, G.S.

16. It is found that the complainant made his request in his capacity as a public defender. He contended at the hearing on this matter that he was entitled to a waiver of the fee pursuant to §1-212, G.S. Section §1-212(a)(1), G.S., provides, in relevant part, that the fee for any copy provided in accordance with the FOI Act by a state agency "... shall not exceed twenty-five cents per page . . ." and §1-212(d)(1), G.S., provides in relevant part, that "...[t]he public agency shall waive any fee provided for in this section when . . . [t]he person requesting the records is a member of the Division of Public Defender Services or an attorney appointed by the court as a special assistant public defender under section 51-296 and such member or attorney certifies that the record pertains to the member's or attorney's duties."

17. It is concluded, however, that §1-212(d), G.S., on its face only provides a waiver of the fees established in §1-212(a), G.S., not the waiver of fees provided for in other statutes such as §29-10b, G.S.

18. It is also concluded that to decide otherwise would effectively be to legislate the §1-212(d), G.S., fee waiver into §29-10b, G.S.

19. It is further concluded, therefore, that the fee waiver provision of §1-212(d)(1), G.S., does not apply to the fees for records under §29-10b, G.S. See Docket #FIC 2015-628, Edmundo Mendieta v. Dora B. Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection; Docket #FIC 2004-109, Cook v. Department of Public Safety et al.; and Docket #FIC 2016-0699, Michael Courtney and the Office of the Chief Public Defender v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection.

20. Consequently, it is further concluded that the respondents did not violate the provisions of §§1-210(a) and 1-212, G.S., by failing to waive the fee set forth in §29-10b, G.S., to provide the complainant with a copy of the investigation report or the photographs that may be contained therein.

21. With respect to the complainant's contention that the requested records were not provided promptly within the meaning of §1-210(a), G.S., the Commission has previously opined that the word "promptly" in §1-210, G.S., means "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 record; 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 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

22. It is found that:

- a. all records requests are complied with by the legal affairs unit of the respondent department;
- b. the breadth of the legal affairs unit's responsibilities is vast and includes providing legal support to approximately 1,800 managers and employees, the Office of the Attorney General and private counsel handling agency matters as well as responding to the hundreds of records requests it receives a year; and
- c. the legal affairs unit, has a total of only 8 positions when fully staffed.

23. It is also found that the subject request was voluminous and required coordination with several different individuals within different divisions of the respondent department in order for the search for responsive records to be conducted. It is further found that once the records were compiled, they had to be reviewed.

24. Based on the findings in paragraph 22 through 23, above, it is concluded that the respondents promptly complied with the complainant's request with respect to all the responsive records.

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 10, 2018.



Cynthia A. Cannata
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 CUSHMAN, 705 North Mountain Road, Newington, CT 06111

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General Stephen R. Sarnoski, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission