

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Lauren Sievert, Mike Savino
and Record Journal,

Complainants

against

Docket #FIC 2017-0402

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

Respondents

May 9, 2018

The above-captioned matter was heard as a contested case on October 20, 2017, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Subsequently, on her own motion, the Hearing Officer reopened this matter. A second hearing was held on December 11, 2017, at which time the complainant and the respondents appeared and presented additional 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 May 16, 2016, the complainants emailed the respondents' Public Information Officer for "a copy of any and all search warrants, arrest warrants, arrest reports, and arrest information regarding the arrest of Bryan Joyce, birth year 1986, arrested on or about Nov. 19, 2015" ("May 16th request"). It is found that by letter dated May 16, 2016, the respondents' Legal Affairs Unit acknowledged such request.
3. It is found that by letter dated June 14, 2016, the Legal Affairs Unit provided the complainants with a case incident report, listing all incidents pertaining to Bryan Joyce, the individual named in the May 16th request. The respondents informed the complainants that if they needed copies of any of the investigative reports related to such incidents, they needed to submit a report request form to the respondents' Reports and Records Unit, and a search and copy fee of \$16 for each investigative report sought. The complainants subsequently submitted a report request form to the Reports and Records Unit for Case Number 1500674851, along

with the requisite \$16 payment, which were both received by the Reports and Records Unit on June 21, 2016.

4. It is found that on August 21, 2016, and then again on July 17, 2017, the complainants telephoned the Reports and Records Unit, inquiring as to the status of their request, described in paragraph 3, above. It is found that on July 17, 2017, the complainants were informed that it would be at least another nine months before the Unit would process their request.

5. By email received and filed on July 18, 2017, the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to provide the records described in paragraph 3, above.

6. 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, printed, photostated, photographed or recorded by any other method.

7. 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.

8. 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.”

9. It is found that the records requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

10. It is found that as of the December 11, 2017 hearing in this matter, the respondents had yet to search for the requested incident report case number 1500674851.

11. At the hearings in this matter, the respondents contended that the delay in processing the complainants’ request was due to lack of staffing, limited budgetary resources and the increasing complexity of case review. The respondents also argued that although the

disclosure of records is important, the handling of records requests is not the respondents' primary mission, which is to protect public safety.

12. 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), 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. The Commission also gave the following guidance:

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing 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.

13. 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.

14. It is found that:

- a. the Reports and Records Unit is the central repository for all Connecticut State Police incident reports;
- b. the Reports and Records Unit receives, logs and processes into the Unit's records management database, approximately 60,000 incident reports annually (e.g., motor vehicle infraction reports, reports that include criminal charges), from the various State Police Troops and specialized units;
- c. copies of the incident reports (and associated documents) are received by the Reports and Records Unit in electronic form (e.g., narrative portion of incident reports) and/or in physical form (e.g., attachments to reports), and, as of the December 11th hearing, there were approximately 170 boxes of documents that have yet to be logged and filed;

- d. as of the October 20, 2017 hearing, the backlog of processing time for logging in new incident reports was approximately 12 months;
- e. all requests for reports under the FOI Act are processed chronologically, in the order that they are received in the Reports and Records Unit, with exception (e.g., records requests received via subpoena are given priority);
- f. at the time of the October 20th hearing, the backlog for processing records requests received by mail, which includes the review and redaction of the responsive records, was approximately 20 months; and
- g. the Reports and Records Unit has four full-time processing technician positions, and is periodically assisted by staff reassigned from other units.

15. At the December 11th hearing, the respondents' witness also testified that an incident report must be logged and processed into the Unit's database before such report can be copied and reviewed for disclosure. She testified that the logging and processing of an incident report includes validating that all records associated with such report were received by the Reports and Records Unit. Once the processing technicians have validated that all such records have been received, then the file is considered to be a "complete file," and the Unit can proceed to review records for public disclosure.

16. It is found that the complainants' request, described in paragraph 3, above, was straightforward, well-defined, and applied to a specific incident.

17. It is found that the Reports and Records Unit is severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts.

18. Nevertheless, it is found that the *approximately two-year* wait before providing records in response to a simple request pursuant to the FOI Act is unacceptable. See also Docket #FIC 2016-0775; Stephen Williams v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (March 22, 2017) in which this Commission found that the respondents' Report and Records Unit estimated compliance with the complainant's request of one and one half to two years (due to an overwhelming work load and a reduction in staffing) was unacceptable and concluded that the respondents had violated §§1-210(a) and 1-212(a), G.S., of the FOI Act for failing to provide the requested records in a prompt manner.

19. It is found, therefore, that the respondents failed to provide records to the complainant in a prompt manner.

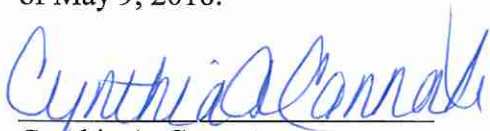
20. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

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

1. Within two weeks of the transmittal of the notice of final decision in this matter, the respondents' Reports and Records Unit shall undertake a search for records responsive to the complainants' request described in paragraph 3 of the findings, above. If the Reports and Records Unit discovers any responsive records, then they shall provide such records to the respondents' Legal Affairs Unit for review. Within two weeks of receipt of the requested records from the Reports and Records Unit, the Legal Affairs Unit shall provide the requested records, redacted if necessary, to the complainants, free of charge.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of May 9, 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:

LAUREN SIEVERT, MIKE SAVINO AND RECORD JOURNAL, 500 South Broad Street, Meriden, CT 06450

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 06106



Cynthia A. Cannata
Acting Clerk of the Commission