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FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Harold Trent Butler,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2016-0169

Chief, Police Department, Town of Hamden;
Police Department, Town of Hamden; and
Town of Hamden,
Respondent(s)

November 10, 2016

Transmittal of Proposed Final Decision

In accordance with Section 4-179 of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision prepared by the hearing officer in the above-captioned matter.

This will notify you that the Commission will consider this matter for disposition at its meeting which will be held in the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2 p.m. on Wednesday, December 7, 2016**. At that time and place you will be allowed to offer oral argument concerning this proposed finding and order. Oral argument shall be limited to ten (10) minutes. For good cause shown, however, the Commission may increase the period of time for argument. A request for additional time must be made in writing and should be filed with the Commission **ON OR BEFORE November 22, 2016**. Such request **MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, and (2) include a notation indicating such notice to all parties or their representatives.**

Although a brief or memorandum of law is not required, if you decide to submit such a document, an **original and fourteen (14) copies** must be filed **ON OR BEFORE November 22, 2016**. **PLEASE NOTE: Any correspondence, brief or memorandum directed to the Commissioners by any party or representative of any party MUST BE (1) copied to all parties, or if the parties are represented, to such representatives, (2) include a notation indicating such notice to all parties or their representatives and (3) be limited to argument. NO NEW EVIDENCE MAY BE SUBMITTED.**

If you have already filed a brief or memorandum with the hearing officer and wish to have that document distributed to each member of the Commission, it is requested that **fifteen (15) copies** be filed **ON OR BEFORE November 22, 2016**, and that **notice be given to all parties or if the parties are represented, to their representatives, that such previously filed document is being submitted to the Commissioners for review.**

By Order of the Freedom of Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Attorney Michael A. Jefferson
Attorney Scott M. Karsten

FIC# 2016-0169/Trans/wrbp/CPH/VDH/TCB/2016-11-10

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer

Harold Trent Butler,

Complainant

against

Docket #FIC 2016-0169

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

Respondents

October 7, 2016

The above-captioned matter was heard as a contested case on August 16, 2016, 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 February 16, 2016, the complainant requested that the respondents provide him with copies of the following records: "all audio and visual recordings stemming from the incident involving [the complainant] and members of the Hamden Police Department on September 11, 2014."
3. By letter dated February 23, 2016 and filed February 26, 2016, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information Act ("FOI Act") by failing to provide him with copies of the records described in paragraphs 2, above.

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 are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the contested case hearing, the complainant contended that, on the evening of September 11, 2014, six police officers from the Hamden Police Department entered his apartment and arrested him. He contended that during this arrest he was the victim of police brutality and was injured very badly. The complainant further contended that, of the six officers that entered his apartment, four of the officers were wearing body cameras. The complainant explained that he requested the recordings from all four body cameras, but received only one, five-minute video from the body camera of one officer. The complainant contends that there should be more body camera video responsive to his request.

9. The respondents contended that they have provided the complainant with all of the video that they maintain with regard to the events that occurred on September 11, 2014.

10. Sergeant Brent Zuscin appeared and testified on behalf of the respondents.

11. It is found that, at the time of the incident giving rise to this complaint, of the 108 police officers employed by the Hamden Police Department, approximately thirty-five officers had been issued body cameras.

12. It is found that, on the evening of September 11, 2014, six officers were called to the complainant’s home. It is further found that, of the six officers, four of the officers were wearing body cameras. It is found that, of the four officers wearing body cameras, only one officer’s body camera was on and operational on the evening of September 11,

2014. It is found that this particular officer had his body camera on and recording during the time in which he was in the hallway of the complainant's apartment building. It is found, however, that this particular officer did not enter the complainant's apartment; rather, while this particular officer was in the hallway waiting with the other officers to enter the complainant's apartment he was called away to another scene.

13. It is found that the hallway video that was recorded on the one operational body camera contains approximately five minutes of video.

14. It is found that Sergeant Zuscin is in charge of preserving, maintaining and copying (when requested) the video recordings that are produced through the use of body cameras.

15. It is found that the Hamden Police Department has a docking station for the department's body cameras. It is found that, when an officer returns to the department from the field after having used his or her body camera, he or she plugs the body camera into the docking station. It is found that, once a body camera is plugged into the docking station, any video contained on the camera is uploaded and maintained in a particular drive.

16. It is found that the respondents maintain all uploaded body camera video for at least sixty days.

17. It is found that Sergeant Zuscin searched the drive where the body camera video is maintained within sixty days¹ of the September 11, 2014 incident and only recovered the five-minute video from one officer's body camera, which video is referred to in paragraph 13, above. It is found that a copy of this video was provided to the complainant in response to his February 16, 2016 request. It is further found that there are no other responsive records—that is, there is no additional body camera video—that can be produced for the complainant.

18. The complainant raised for the hearing officer's consideration the fact that, pursuant to the Hamden Police Department's General Orders, all officers who are issued a body camera must have such cameras activated, as follows:

D. The [body camera] shall be worn at all times by the assigned officer.

E. All Officers shall activate the [body camera] in the Event Mode as soon as practical once it has been determined in the officer's use of sound judgment that an

¹ It is found that, on September 18, 2014, the complainant filed a civilian complaint concerning the September 11, 2014 incident with the respondent police department. It is found that, because such a complaint was filed within sixty days of the incident, any existing video depicting the incident was preserved.

incident is to be recorded in accordance with this order.
This includes, but is not limited to the following:

....

3. Any investigative encounter to confirm or dispel a suspicion that the person may be involved with criminal activity. This includes, but is not limited to, investigative detentions, vehicle stops, field contacts;

....

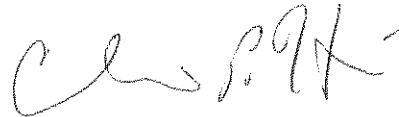
G. Officers who don't activate their [body camera] in situations where they were required to as outlined in paragraphs D and E above may be subject to discipline. . . .

19. While the complainant has correctly cited the respondents' General Orders with regard to body cameras, the Commission simply cannot provide the complainant with any relief in this case because the records he seeks were never created.

20. Accordingly, it is concluded that the respondents did not violate the FOI Act with respect to the request for records in this case.

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

1. The complaint is dismissed.



Commissioner Christopher P. Hankins
as Hearing Officer