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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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Guy Gilmore,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2016-0656

Michael B. Smart, City Clerk, City of New Haven; City of New Haven; Commissioner, State of Connecticut, Department of Correction; and State of Connecticut, Department of Correction,  
Respondent(s)

June 16, 2017

## 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, July 12, 2017**. 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 June 28, 2017**. 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 June 28, 2017**. **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 June 28, 2017**, 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: Guy Gilmore  
Attorney Kathleen Foster  
Attorney James Neil  
cc: Craig Washington

FIC# 2016-0656/Trans/wrbp/VRP/VDH/2017-06-16

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Guy Gilmore,

Complainant

against

Docket #FIC 2016-0656

Michael B. Smart, City Clerk, City of  
New Haven; Police Department, City of  
New Haven; and City of New Haven;

Respondents

June 12, 2017

The above-captioned matter was heard as a contested case on April 19 and June 1, 2017, at which times the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The caption of the case has been modified to reflect the addition of the New Haven Police Department as a respondent, and the omission of the State of Connecticut Department of Correction as a respondent. This case was consolidated for hearing with Docket #FIC 2016-0655, *Guy Gilmore v. Dean Esserman et al.* The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. See Docket No. CV 03-0826293, *Anthony Sinchak v. FOIC et al*, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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. By letter of complaint filed September 12, 2016, the complainant appealed to the Commission, alleging that the New Haven City Clerk denied his August 11, 2016 request for certain public records.
3. It is found that the complainant made an August 11, 2016 request to the New Haven City Clerk for copies of "street camera" video recordings made on September 13, September 16 and October 25, 2014, pertaining to the investigation, prosecution, and conviction of the complainant.

4. It is found that the respondent City Clerk promptly referred the request to the New Haven Police Department.

5. It is found that the New Haven Police Department only retains street camera video for fourteen days, and that the video recordings from 2014 no longer exist.

6. It is found that the New Haven respondents also located surveillance video recordings made by the New Haven Police Department Narcotics Unit of controlled narcotics purchases on the dates identified by the complainant.

7. It is found that the New Haven Police Department, for the reasons noted below, did not provide copies of the surveillance videos to the complainant, and consequently, no records in this case were received or reviewed by the Department of Correction.

8. Section 1-200(5), G.S., defines “public records” as follows:

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, ...whether such data or information be handwritten, typed, tape-recorded, printed, photostated, photographed or recorded by any other method.

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

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.

10. 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.”

11. 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.

12. The New Haven Police Department contends that the surveillance videos would disclose the identity of a confidential informant.

13. Section 1-210(b)(3)(A), G.S., provides that disclosure is not required of law enforcement records if disclosure of those records would result in the disclosure of “the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known ....”

14. It is found that the three surveillance videos are video and audio recordings of controlled drug purchases by a confidential informant.

15. It is found that the disclosure of the surveillance videos would result in the disclosure of the identity of an informant not otherwise known.

16. It is found that disclosure of the identity of the confidential informant, who cooperated in the controlled purchase of narcotics from individuals being investigated by the New Haven respondents, would endanger the informant or subject him or her to threat or intimidation.

17. It is therefore concluded that the surveillance videos are permissibly exempt from disclosure pursuant to §1-210(b)(3)(A), G.S., and that the New Haven Police Department did not violate the FOI Act by withholding them.

18. At the hearing, the Department of Correction requested that the caption of the case be amended to omit it as a respondent. That request is granted, since the requested records were not transmitted to the Department and the Department had no other role in the case.

19. At the hearing, the New Haven City Clerk requested that the case be dismissed as to the City Clerk, since the City Clerk is not the custodian of the records, and simply transmitted the request to the holder of the records, the New Haven Police Department. That request is granted.

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.



Victor R. Perpetua  
As Hearing Officer