DOCKET NO. HHB-CV-14-6026251-S	:	SUPERIOR COURT
MONTVILLE POLICE DEPARTMENT	:	JUDICIAL DISTRICT OF NEW BRITAIN
VS.	:	
FREEDOM OF INFORMATION COMMISSION AND ROBERT A. CUSHMAN	:	FEBRUARY 1, 2018

MEMORANDUM OF DECISION

In this administrative appeal, the plaintiff, Montville Police Department, challenges the decision of the defendant Freedom of Information Commission (commission), which ordered the plaintiff to produce certain records and reports requested by the defendant Robert Cushman related to traffic stops and arrests for operating a motor vehicle under the influence of alcohol or drugs. The plaintiff claims generally that it is not an organized police force but a constabulary that is subordinate to the Department of Emergency Services and Public Protection, Division of State Police (DESPP or state police), which has ordered it not to provide the records at issue to Cushman. It also claims that the commission failed to rule on its claim that its copies of the documents at issue are exempt from disclosure as "preliminary drafts." The commission argues generally that public agencies cannot contract away their obligations under the Freedom of Information Act (the act). It further argues that the record below establishes that the plaintiff keeps final versions of the records and reports at issue in its

own files. For the reasons stated below, the plaintiff's appeal is dismissed as to its claim that the records at issue must be requested from DESPP rather than from the plaintiff. The plaintiff's appeal is sustained as to its claim that the commission failed to rule on its assertion of the preliminary draft exemption, and the case is remanded to the commission to address that claim. The plaintiff's remaining claims are dismissed for the reasons stated below.

PROCEDURAL HISTORY

On July 25, 2013, Cushman made a request to the plaintiff for all records and reports concerning all motor vehicle stops by the plaintiff on Route 32 in Montville from January 31, 2012 to the present, all records and reports of all motor vehicle stops by a particular police officer in the same date range, and all standardized procedures and protocols for operating under the influence vehicle stops and arrests. Return of Record (ROR), p. 2. On August 5, 2012, the plaintiff responded that it had received his request and would notify him when the records had been located and reviewed for exemptions. Supplemental Record (SR), p. 212. On the same date, Cushman filed a complaint with the commission, alleging that he had been denied access to the requested records. SR, p. 212.

On March 4, 2014, the parties appeared for a contested case hearing at the commission but reported that they had reached agreement about the production of the records. The

plaintiff agreed to provide, within two weeks, A-44 reports[1] and reports of arrests that had been nolled but were still within the thirteen-month period in which they were disclosable, and to allow Cushman to inspect summons forms within a few weeks. Supplemental Record II (SR II), pp. 4-5. The matter was continued to May 1, 2014, when the parties again appeared. At the May hearing, the plaintiff's attorney reported that since the March hearing, the plaintiff had determined that the requests should have been directed to DESPP, which is entitled to a fee of sixteen dollars for each record search or report. ROR, pp. 37-38, 47. The plaintiff's attorney also represented that the plaintiff had experienced difficulty in determining how to comply with the erasure statute, General Statutes § 54-142a. ROR, pp. 47-50. On

---

[1] The commission found that "an A44 report is completed by an arresting officer and includes four sections for completion, including the time and location of the stop, a short narrative of the stop, and two questions asked directly to the operator of a vehicle stopped for a DWI: what the operator ate; and when was the last time the operator consumed alcohol." SR, p. 211, n. 1. In fact, A-44 reports contain more information than the commission found. A-44 reports are governed by General Statutes § 14-227b (c) and by §§ 14-227b-10 and 14-227b-19 of the Regulations of Connecticut State Agencies. Pursuant to § 14-227b-10 (b) of the regulations, "[a]dditional statements or materials necessary to explain any item of information in the report may be attached to the report. Such attachment(s) shall be considered a part of the report having the approval of the commissioner, as provided in subsection (c) of section 14-227b of the Connecticut General Statutes, if sworn to under penalty of false statement." A-44 reports and their attachments contain information related to an arrest for operation of a motor vehicle under the influence of alcohol or drugs, including but not limited to information about the operator and vehicle, the results of standardized field sobriety tests, information about the arrest and advisements of rights, answers to questions asked of the operator in a post-arrest interview, and results of chemical alcohol tests or the refusal to take such tests. See, e.g., *Roy* v. *Commissioner of Motor Vehicles*, 67 Conn. App. 394, 396 n.3 and 397 n.5, 786 A.2d 1279 (2001); see also *Do* v. *Commissioner of Motor Vehicles*, 164 Conn. App. 616, 138 A.3d 359 (2016) (describing various sections of A-44 form), cert. granted, 322 Conn. 901, 138 A.3d 931 (2016).

May 23, 2014, the hearing officer issued a proposed decision, which was approved by the commission on June 11, 2014, and the final decision was mailed to the parties on June 12, 2014. ROR, p. 146. In that decision, the commission ordered the plaintiff to provide copies of all non-erased A-44 reports from January 31, 2013 to May 1, 2014, and copies of records of all non-erased nolled cases for which the thirteen-month period between nolle and dismissal had not expired, from January 31, 2013 through May 1, 2014. ROR, p. 150. The plaintiff appealed to this court on July 25, 2014.

While the appeal was pending, the plaintiff moved to supplement the record with an affidavit by a DESPP attorney, Janet Ainsworth, who attested that the records at issue were DESPP's records and that the plaintiff was not authorized to release them. The plaintiff also sought to add to the record a copy of the contract between Montville and the state police. On December 3, 2014, the court, *Schuman, J.*, remanded the matter to the commission to permit the parties to present additional evidence and argument and to allow DESPP to intervene if it sought to do so. SR, p. 1. On April 28, 2015, a hearing was conducted pursuant to the court's remand order. DESPP was aware of the hearing but chose not to intervene. SR, pp. 9-10. At the hearing, the plaintiff presented the testimony of DESPP's attorney, Janet Ainsworth, and of Lieutenant Leonard Bunnell, a police officer and town employee who served as the plaintiff's administrative supervisor. SR, pp. 18-46 (Ainsworth), 47-77 (Bunnell). It also presented Ainsworth's affidavit (SR, pp. 97-99), a copy of the contract between Montville and

the state police (SR, pp. 100-108), and an e-mail chain ending in an order from a state police officer to Bunnell to cease work on the plaintiff's request (SR, pp.109-110). The hearing officer issued a new report upon remand on February 1, 2016 (SR, pp. 144-49), followed by a second report upon remand dated April 14, 2016 (SR, pp. 165-71). On April 27, 2016, after a hearing, the commission approved the April 14, 2016 report as its final decision upon remand. SR, pp. 210-17. It mailed notice of the decision on May 3, 2016. SR, p. 210. The court was notified of the decision upon remand on September 30, 2016, and the appeal proceeded.

FACTS

The following material facts are drawn from the agency's final decision after remand.

The plaintiff is a public agency within the meaning of General Statutes § 1-200 (1). The records requested are public records within the meaning of General Statutes §§ 1-200 (5), 1-210 (a), and 1-212 (a).

Before the remand hearing on April 28, 2015, the plaintiff provided Cushman with the summons forms he had requested. As to the A-44 reports and records of nolled cases prior to erasure, the commission found that DESPP had the original records, but the plaintiff maintains a copy of the records for its own administrative or law enforcement purposes.

At the remand hearing and in a post-hearing brief, the plaintiff contended that Cushman was required to make his request for records to DESPP pursuant to General Statutes § 29-10b and the town's contract with DESPP. The plaintiff further contended that, pursuant

to the contract, all of the plaintiff's law enforcement records are maintained exclusively by DESPP, that DESPP is the custodian of all the plaintiff's law enforcement records wherever they are maintained, and that to the extent that the plaintiff maintains a duplicate copy of records, such records may be used only for law enforcement purposes. DESPP shares this contention.

The plaintiff did not provide Cushman with access to the A-44 reports or the records of nolled but not yet erased cases, even though the plaintiff maintains copies of those records within its files and could provide copies from its own files.

The commission took administrative notice of the Connecticut Resident State Trooper program, in which a state trooper provides police services to a town pursuant to a contract between the town and the state. Such a contract exists between the town of Montville and DESPP. Pursuant to the contract, a resident state trooper supervises the operational aspect of the town's police department, which has 24 police officers. The town's mayor serves as the chief of police and a police lieutenant serves as the plaintiff's administrative head.

The relevant portions of the contract between DESPP and the town are Sections I.A and I.D. Section I.A provides in relevant part: "The Town hereby delegates to the State Police the authority to supervise and direct the law enforcement operations of appointed constables and police officers in the Town . . . ." SR, p. 100. Section I.D provides in relevant part: "All Town police investigative records shall be maintained by the Department of Emergency

Services and Public Protection. All investigative reports shall be prepared, formatted and submitted in the manner approved by State Police." SR, p. 102.

The commission found that the contract delegates the town's law enforcement authority to the state police, and requires the state police to maintain records, but it does not delegate the town's obligations under the act to the state police and does not abrogate the town's own record-keeping responsibilities.

General Statutes § 29-10b provides in relevant part: "The Commissioner of Emergency Services 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." The commission found that nothing in § 29-10b, even when read in the context of the contract between the town and DESPP, supports the plaintiff's claim that it is not required to provide a copy of records that it maintains. The commission found that the plaintiff had failed to comply with the disclosure provisions of §§ 1-210 (a) and 1-212 (a) by failing to provide Cushman with copies of non-erased A-44 reports and other reports of nolled cases that have not yet been erased.

The commission discussed the plaintiff's explanations for its failure to provide the records, including its difficulty in determining whether nolled cases had been erased. The commission determined that the plaintiff now understands how to conduct an accurate search

to determine whether nolled cases have been erased.

The commission noted that the parties had previously agreed to extend the scope of Cushman's request through May 1, 2014, since many of the records he originally sought have become subject to the erasure statute and cannot be disclosed. It held that the remedy previously ordered was no longer adequate because the case remained open nearly two years after May 1, 2014. It therefore ordered the plaintiff to provide Cushman, free of charge, copies of all non-erased A-44 reports and copies of records related to all non-erased nolled cases from January 31, 2013 to the date of the final decision in this matter. It further ordered the plaintiff to provide Cushman with access to all non-erased summons forms from January 31, 2013 to the date of final decision, notwithstanding the fact that it had previously found that the plaintiff had complied with the request for disclosure of summons forms. Finally, it ordered the plaintiff to strictly comply with §§ 1-210 (a) and 1-212 (a).

SCOPE OF REVIEW

This appeal is brought pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes § 4-183.[2] Judicial review of the commission's decision "is very

[2] Section 4-183 (j) provides in relevant part: "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by

restricted. . . . With regard to questions of fact, it is neither the function of the trial court nor of [the Supreme Court] to retry the case or to substitute its judgment for that of the administrative agency. . . . Even as to questions of law, [t]he court's ultimate duty is only to decide whether, in light of the evidence, the [agency] has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." (Internal quotation marks omitted.) *Lash* v. *Freedom of Information Commission*, 300 Conn. 511, 517, 14 A.3d 998 (2011).

"In determining whether an administrative finding is supported by substantial evidence, the reviewing court must defer to the agency's assessment of the credibility of witnesses. . . . The reviewing court must take into account contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." (Internal quotation marks omitted.) *Moraski v. Connecticut Board of Examiners of Embalmers & Funeral Directors,* 291 Conn. 242, 266–67, 967 A.2d 1199 (2009).

DISCUSSION

In this appeal, the plaintiff claims that (1) the commission's final decision failed to address an order by the state police that the plaintiff cease working on Cushman's record request; (2) the commission erred by finding that the plaintiff keeps essentially duplicate

---

abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings."

copies of the reports maintained by DESPP and by changing Cushman's request; (3) the commission failed to address the plaintiff's claim that its copies of the records at issue were exempt from disclosure as preliminary drafts; and (4) the 2016 final decision improperly extended the time frame covered by Cushman's request by more than a year.[3]

A

The plaintiff's first claim is that the commission's final decision failed to address an order by the state police that the plaintiff cease work on Cushman's request, which, it argues, leaves the plaintiff in the anomalous position of being required to comply with conflicting orders from two state agencies. Although the plaintiff is correct that the final decision does not *specifically* address the state police order, the decision does address the premise underlying the order – that DESPP "owns" the requested records and is the only agency that is authorized to release them.

The record as established in the remand hearing reveals that shortly after the commission issued its first decision on June 12, 2014, the plaintiff sought assistance from DESPP in producing the requested reports. Ainsworth, a DESPP attorney, advised the commanding officer for the state police troop in Montville that "DESPP, which is a not a

---

[3] The plaintiff also claimed that the commission's order to produce summons forms is inconsistent with its finding that the plaintiff had already complied with Cushman's request to receive access to summons forms. At the court hearing in this appeal, Cushman stated that there are no pending issues with respect to summons forms. The court therefore need not address that issue.

party to this decision, is under no obligation to produce these records and particularly not without payment of the $16 report fee. Also, Montville is not authorized to go into LEAS and download draft reports from the CSP records system for this purpose. Montville can produce what they already have in their possession.[4] Please advise Lt. Bunnell. I have left a voicemail message with the town attorney. I will get back to you on an advisement to the RT towns regarding records requests." SR, p. 109. Minutes after receiving this e-mail, the commanding officer for the Montville state police troop forwarded it to Bunnell, the plaintiff's administrative supervisor, with this direction: "See below concerning the FOI request we previously discussed. When I get additional direction I will advise both Sgt. Smith and you on how we will proceed in the future when your PD receives these type of request. Per below do not take any further action on this request." SR, p. 109.

In an affidavit submitted as an exhibit in the remand hearing, Ainsworth attested that pursuant to the agreement between the town and DESPP, all town police investigative records are maintained by DESPP, and the official repository of those reports is the DESPP Reports and Records Unit. She further attested that copies of "any reports" are available only upon

---

[4] The parties disagree as to the meaning of Ainsworth's statement that "Montville can produce what they already have in their possession." Ainsworth attested that "DESPP has no authority over records maintained solely by a municipality participating in the resident trooper program. Examples would be records from a municipal computer aided dispatch system, infraction tickets or summonses, vehicle calibration records or laser/radar calibration records." SR, p. 99. The plaintiff contends that Ainsworth's e-mail refers only to such locally maintained records, while the commission contends that the e-mail permits the town to disclose copies of arrest records as well.

payment of the $16 search fee mandated by General Statutes § 29-10b and that "the agency believes that this statute precludes the partial release of records from reports under the Freedom of Information Act." SR, p. 97. She further attested that "only simple motor vehicle accidents involving infractions not subject to elevation to a misdemeanor may be released at the troops . . . . Records are not released at the Resident Trooper offices." SR, p. 98. She contended that reports reflecting criminal charges are not released from the troops because the reports could be subject to erasure or could require redaction pursuant to statutes protecting information about juvenile offenders, victims of sexual assault, holders of firearm permits, or could be protected under other statutes, such as General Statutes § 1-210 (b) (3) (D), while a prosecution was pending. She asserted that the policy was in place because individual officers are not trained to do the type of review required to ensure that reports are released only in accordance with statutory requirements. She further asserted that a constable or police officer in a town with a resident state trooper would be the subject of a complaint to the Professional Standards Unit if he or she released records without authorization. SR, pp. 22-23, 98. She admitted, however, that certain records maintained by the plaintiff, such as infraction tickets, vehicle calibration records, and records of a municipal computer-aided dispatch system, were not DESPP records. SR, pp. 24, 38-39, 99.

Although the commission did not directly address either the state police order to stop working on the Cushman request or Ainsworth's contention that the release of such records by

the town would subject the person releasing the records to discipline, it held that the evidence and arguments presented did not support DESPP's contention that it "owns" the records. The law and the evidence support the commission's conclusion.

General Statutes § 1-210 (a) 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 business hours . . . or (3) receive a copy of such records in accordance with section 1-212. *Any agency rule or regulation, or part thereof, that conflicts with the provision of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void.* Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located . . . ." (Emphasis added.) General Statutes § 1-212 (a) in turn 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."

Our Supreme Court has repeatedly held that "[t]he overarching legislative policy of [the act] is one that favors the open conduct of government and free public access to

government records. . . . [I]t is well established that the general rule under the [act] is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the [act].... [Thus] [t]he burden of proving the applicability of an exception [to disclosure under the act] rests upon the party claiming it." (Internal quotation marks omitted.) *Lieberman* v. *Aronow*, 319 Conn. 748, 754–55, 127 A.3d 970 (2015).

In this appeal, the plaintiff does not claim that it is not a public agency in its own right, distinct from DESPP.[5] Nor did DESPP's attorney make such a claim in her affidavit or testimony. The plaintiff instead advances DESPP's arguments that pursuant to General Statutes § 29-5, the town has delegated its law enforcement authority to the state police through its contract with DESPP; that DESPP alone maintains the official reports of all investigations by the town's police; and that pursuant to General Statutes § 29-10b, copies of police reports can be obtained only from DESPP's Records and Reports Unit after payment of the sixteen dollar search fee. The commission correctly rejected this argument.

---

[5] Although the plaintiff does not dispute that it is a public agency, it contends that Montville has no organized police department, but employs more than twenty police officers who are supervised by a resident state trooper pursuant to General Statutes § 29-5. It is undisputed that Montville has a police department building. In its brief, the commission contends that the plaintiff has a "police department, which does exist." The fact that the plaintiff employs police officers and has a police department building, however, does not mean that it has an "organized police force" within the meaning of § 29-5. See *Genesky* v. *East Lyme*, 275 Conn. 246, 255-66, 881 A.2d 114 (2005) (discussing the differences between an organized police force and a constabulary under Connecticut statutes).

General Statutes § 29-5[6] provides generally for the appointment of members of the state police force to serve as "resident state policemen" in any town lacking an organized police force and prescribes the compensation to be paid by the town for such services. Other than generally authorizing the appointment of resident state troopers, it does not address the relationship between the resident state troopers and any police officers or constables employed by a town, nor does it address the issue of records or reports. General Statutes § 29-10b,[7] on

---

[6] General Statutes § 29-5 provides in relevant part as follows: "(a) The Commissioner of Emergency Services and Public Protection may, within available appropriations, appoint suitable persons from the regular state police force as resident state policemen in addition to the regular state police force to be employed and empowered as state policemen in any town or two or more adjoining towns lacking an organized police force, and such officers may be detailed by said commissioner as resident state policemen for regular assignment to such towns, provided each town shall pay eighty-five per cent of the cost of compensation, maintenance and other expenses of the first two state policemen detailed to such town, and one hundred per cent of such costs of compensation, maintenance and other expenses for any additional state policemen detailed to such town, provided further such town shall pay one hundred per cent of any overtime costs and such portion of fringe benefits directly associated with such overtime costs. Such town or towns and the Commissioner of Emergency Services and Public Protection are authorized to enter into agreements and contracts for such police services, with the approval of the Attorney General, for periods not exceeding two years."

[7] General Statutes § 29-10b 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."

which DESPP expressly relied to support its claim that it "owns" the reports created in resident trooper towns, is a fee-generating statute that does not address the "ownership" of arrest records created in resident trooper towns.

The plaintiff also relies on section I.D of the agreement between DESPP and the town, which provides that "[a]ll Town police investigative records shall be maintained by the Department of Emergency Services and Public Protection. All investigative reports shall be prepared, formatted and submitted in the manner approved by State Police. The Town shall be responsible for providing network access to the State Police records management system in accordance with the requirements of the State Police." SR, p. 102. The plaintiff argues that section I.D and DESPP's record maintenance policy are intended to implement the provisions of § 29-5. It claims that records created under the agreement are exempted from disclosure by the towns under the provision of General Statutes § 1-210 (a) that states: "Except as otherwise provided in any federal law or state statute . . . ."

Nothing in §§ 29-5 or 29-10b suggests that DESPP is the sole custodian of arrest records in resident trooper towns. Section 29-5 merely authorizes the use of resident state troopers for local law enforcement and establishes a compensation schedule for such services. Section 29-10b alters the fees imposed for public records by General Statutes § 1-212 but, like § 29-5, is silent as to the effect of resident trooper agreements on the obligation of public agencies to disclose public records that they keep.

The plaintiff argues that to comply with the commission's order and DESPP's order, it will be required to pay DESPP sixteen dollars for each search. It contends that such a result is precluded by *Lash* v. *Freedom of Information Commission*, 116 Conn. App. 171, 976 A.2d 739 (2009), reversed in part on other grounds, 300 Conn. 511, 14 A.3d 998 (2011). The commission argues, in response, that the courts have previously rejected DESPP's so-called "central dissemination policy," which requires individuals seeking records held by any state police troop to request the records from DESPP's Reports and Records Unit. It cites *Department of Public Safety* v. *Freedom of Information Commission*, 29 Conn. App. 821, 618 A.2d 565 (1993), in support of its position.

Neither case clearly controls the outcome of this case. In *Lash*, the commission had ruled that a first selectman, as chief executive officer for the town, had the responsibility to arrange for production of records of public agencies for which he was responsible and therefore had a duty to inquire of the town's law department as to whether it had any documents responsive to a particular request. After reviewing the town's charter, the Appellate Court disagreed, concluding that the records at issue were maintained by the law department, not the first selectman, and that the first selectman had no duty to maintain or disclose the law department's records. *Lash* v. *Freedom of Information Commission*, supra, 116 Conn. App. 185-88. The court observed that "it is clear that one public agency may not be held responsible for disclosing the records in the custody of another public agency." Id.,

188. The commission argues that *Lash* is not controlling in this case because Cushman is seeking copies of records and reports that are in the plaintiff's custody.

In the *Department of Public Safety* case, the Appellate Court upheld a commission finding that the Department of Public Safety[8] had violated the act by precluding the release of accident reports at troop barracks. *Department of Public Safety* v. *Freedom of Information Commission*, supra, 29 Conn. App. 822-24. In that case, the Department of Public Safety had required an individual to request accident reports from the Reports and Records Unit. The Appellate Court agreed with the trial court's conclusion that "any state trooper can recognize and copy an accident report without danger of disclosing sensitive or confidential information." Id., 825. As the plaintiff argues, the *Department of Public Safety* case does not address the documents requested here. Cushman seeks non-erased A-44s and incident reports. Unlike simple accident reports, these are records of arrest for crimes. As Ainsworth attested, such records may be subject to erasure under General Statutes § 54-142a and would have to be reviewed not only for erasure but also for other confidentiality statutes that might apply, such as statutes that protect the identities of sexual assault victims, juvenile offenders, or other exemptions under the Freedom of Information Act, including the exemption in General Statutes § 1-210 (b) (3) (D) relating to prejudice to pending prosecutions. SR, p. 98. It is not uncommon for other criminal violations to be charged at the same time as a charge for

---

[8] The Department of Public Safety was a predecessor agency to DESPP.

operating under the influence of alcohol or drugs. See, e.g., *State v. Dalzell,* 282 Conn. 709, 713, 924 A.2d 809 (2007) (traffic stop for failure to use seat belt resulting in arrest for operating under influence of drugs, possession of narcotics with intent to sell, possession of narcotics, and possession of narcotics paraphernalia); *In re Christopher L.,* 135 Conn. App. 232, 234, 41 A.3d 664 (2012) (parent arrested for operating under the influence and for risk of injury for driving while intoxicated with children in car).

The question presented here is different from those in *Lash* and *Department of Public Safety.* Here, two public agencies maintain records relating to the same arrests. The plaintiff argues that the commanding officer of the state police, under the authority of a resident trooper contract authorized by General Statutes § 29-5, has ordered it not to release records of arrests but to refer the requester to DESPP's Reports and Records Unit. The commission argues that the town maintains the records for its own purposes, such as determining how many accidents occur at specific locations, and is therefore responsible for its own compliance with records requests under the act.

Neither of the statutes cited by the plaintiff addresses the disclosure of arrest records in a town where law enforcement authority is delegated to the state police. In the absence of a statute clearly providing an exemption or clearly placing the responsibility for the records in only one of the two public agencies that maintain them, the general statutes applicable to public records apply. The plaintiff has not asserted the exemption for law enforcement

records not otherwise available to the public under General Statutes § 1-210 (b) (3).

Although DESPP asserted, through Ainsworth's testimony and affidavit, that it "owns" the records at issue, DESPP did not move to intervene when offered the opportunity. Nor did it cite any statute that confers authority on state troopers to order a municipal officer to deny access to arrest records and to require that all requests for records of arrests by constables or police officers in a resident trooper town be made to DESPP's Reports and Records Unit. DESPP's central dissemination policy may well be a prudent one, established to ensure compliance with the various laws protecting confidentiality of information about individuals who interact with the police, whether as victims or witnesses or as arrestees whose charges are later erased. But unless the policy is specifically authorized by statute, it cannot override the general mandate of General Statutes § 1-210 (a). Section 1-210 (a) unambiguously provides that "[a]ny agency rule or regulation, or part thereof, that conflicts with the provision of this subsection or diminishes or curtails the rights granted by this subsection shall be void." Exceptions to § 1-210 (a) are recognized only as "otherwise provided by any federal law or state statute." General Statutes § 1-210 (a). The commission's holding that the records maintained by the plaintiff are subject to disclosure by the plaintiff is, implicitly, a holding that DESPP has no statutory authority to order the plaintiff to deny a public records request in the circumstances of this case. On the basis of the record before the court and the statutes on which the plaintiff relies, the court agrees.

B

The plaintiff's next argument has two prongs. It challenges the commission's findings that "in almost every instance, the respondents,[9] maintain a copy of the records for their own administrative or law enforcement purposes" and that the plaintiff maintains "a separate copy of the records within their files." It then asserts that the commission effectively changed Cushman's original request. It asserts that Cushman requested "records and reports" but that the commission ordered it to produce whatever pieces of paper it has regarding the arrests, even though, in the plaintiff's view, there is no evidence that the pieces of paper in its files are the same as the official records and reports maintained by DESPP.

Whether the records and reports maintained by the plaintiff are the same as the official reports maintained by DESPP more properly relates to the plaintiff's claim that the records it maintains are preliminary drafts and will be addressed in relation to that claim. The plaintiff's argument that the commission somehow changed Cushman's request is not supported by the record. Cushman requested "all records and reports concerning motor vehicle stops" on a particular road and "all records and reports of all motor vehicle stops" by a particular officer. When, in the remand hearing, the plaintiff argued that the records it maintains are preliminary drafts, Cushman stated "if it's kept in their possession, they maintain it, then I would like to

---

[9] The plaintiff and the town's chief of police, who was its mayor, were the respondents in the contested case at the commission.

get whether they call it a draft or not." SR, p. 81. By agreeing to accept whatever records the plaintiffs maintain, Cushman merely limited his original request for "all records and reports." He did not demand that the plaintiff obtain official copies of the records from DESPP. This limitation did not expand his original request but merely clarified that he sought whatever records and reports the plaintiff keeps.

The plaintiff cites a prior decision by the commission in *Jestreby and Cowles* v. *First Selectman, Town of Lebanon,* FOIC Docket # FIC 2013-173, in support of its claim that it should not be required to produce copies of records officially maintained by DESPP. Although *Jestreby*, like this case, involved a request for arrest records directed to a town that had delegated its law enforcement authority to the state police, the similarities end there. In *Jestreby,* the commission found that neither the town of Lebanon nor its first selectman maintained the records sought by the complainants and that the resident state trooper did not maintain incident reports in his office in Lebanon. The commission therefore dismissed Jestreby's complaint, concluding that Lebanon had not violated the Freedom of Information Act when it directed the requester to seek the records from DESPP. In this case, unlike *Jestreby*, the evidence supports a conclusion that the plaintiff *does* maintain copies of arrest records for its own administrative and law enforcement purposes.

The evidence introduced at the remand hearing supports the commission's conclusion that the plaintiff maintains records and reports that are responsive to Cushman's request, as

that request was limited by Cushman during the remand hearing. The commission did not commit clear error by so finding.

C

The plaintiff next claims that the commission's decision fails to address the plaintiff's claim that the records and reports it maintains are preliminary drafts that are exempt from disclosure pursuant to General Statutes § 1-210 (b) (1).[10] The commission addresses this argument only in a footnote, arguing that any claim that the records are exempt as preliminary drafts is "just another dead end." Def. Br., p. 28. The record reveals, however, that the plaintiff asserted the preliminary draft exemption throughout the remand hearing and in a brief submitted after the proposed final decision was issued, but the final decision did not address the claim of exemption, at least in part because the hearing officer, who was present at the commission's hearing, erroneously told the commission that the claim of exemption as a preliminary draft had not been raised in the hearing before her.

The record contains the following evidence related to the claim of the preliminary draft exemption. Ainsworth testified that DESPP considers the records maintained by the plaintiff to be drafts and that their release could cause confusion in the courts. SR, p. 25. She testified

---

[10] General Statutes § 1-210 (b) provides in relevant part: "Nothing in the Freedom of Information Act shall be construed to require disclosure of: (1) preliminary drafts or notes provided the public agency has determined that the public interest in withholding such documents clearly outweighs the public interest in disclosure . . . ."

that drafts kept at the troop level were not authorized to be released. SR, p. 30. In her affidavit, Ainsworth explained that the records maintained at the troops are incomplete because they are not capable of receiving judicial updating regarding erasure. SR, p. 98.

Bunnell testified as to the way in which the reports are created, modified, and maintained. SR, pp. 48-54. The commission argues that Bunnell's testimony establishes that preliminary drafts are eliminated from the files maintained in Montville. The statement on which the commission relies, however, is ambiguous. When read in isolation, it supports the commission's argument, but when read in context, it can be construed to mean that drafts are removed from the "package" that is the sent to the resident state trooper but that drafts are kept in the local file, which may have two, three, or more sets of copies without clearly identifying the "actual real one" except perhaps by a "sticky note." SR, p. 52.[11]

---

[11] Bunnell testified that an arresting officer initially completes whatever forms are associated with a particular investigation. SR, p. 48. That report is electronically reviewed by the platoon sergeant who determines whether it needs to be corrected. SR, p. 48. After the report is reviewed, the sergeant prints out the report and collects any attachments that are not electronic, such as witness statements or a printed copy of an A-44 report. SR, p. 49. The printed report and any attachments are then taken to the department secretary, who makes copies of the entire "package." SR, p. 49. The copies made by the secretary are placed in the file under the case number and the originals are forwarded to the resident trooper who takes them to the state police barracks. SR, p. 49. There, the troop clerk reviews the report, and if corrections are needed, the package is sent back to the resident trooper, who gives it back to the sergeant with direction to return it to the arresting officer for whatever changes are needed. The arresting officer makes corrections either on the hard copy or electronically and sends it back to the sergeant for approval. SR, p. 50.

Asked whether there was any guarantee that corrected copies of the report stay within the town, Bunnell testified: "Well, the corrected copies, now that the sergeant has reviewed

On May 19, 2015, the plaintiff filed a post-hearing brief in which it distinctly raised a claim of exemption under General Statutes § 1-210 (b) (1) for preliminary drafts. SR, pp. 136-139. On February 1, 2016, the hearing officer issued a report upon remand which recommended that the commission continue to order the disclosure of the records and reports in the plaintiff's possession. SR, pp. 145-49. This report did not address the plaintiff's claim of exemption as a preliminary draft under § 1-210 (b) (1). On February 25, 2016, the plaintiff submitted a brief to the commission, again raising the preliminary draft exemption under § 1-210 (b) (1). SR, pp. 156-59. On April 14, 2016, the hearing officer issued a second report that contained certain additional findings but still did not address the preliminary draft exemption. SR, pp. 166-171.

The commission heard argument in the case on April 27, 2016. The plaintiff's counsel

---

the corrections electronically, he'll print it out again and he'll put the printouts with the package and eliminate those that were corrected, drafts. And some of the draft stays here and then the package is again forwarded up to the department clerk and the department clerk will make another copy of that package." SR, p. 51. He testified that Montville keeps copies of the reports as an "investigative tool" to have available if the electronic system fails. He further testified that the copies maintained by Montville could not be guaranteed to be accurate. SR, p. 51-52. He explained: "Well, because they've been corrected and sent back down, rewritten, revised, changed, and we're making another copy and we're relying on a sticky note that identified what the corrections might have been and changes that were done, and then put into the same file with the original copies that we made. So now we could have two, three, or maybe even four different sets of copies of that one report that is in the file. So we don't know – we don't know which is the actual real one, so, except for a sticky note maybe." SR, p. 52. He testified that release of a draft report that differed from the official report maintained by DESPP would create an issue of credibility. SR, p. 56.

raised the preliminary draft exemption, among other arguments. SR, pp. 176-79. At least two commissioners, and possibly others,[12] indicated concern that the records maintained in Montville were not necessarily the final records. SR, pp. 191. One commissioner asked whether there was "a focus on the preliminary nature of the A44 piece at all?" The hearing officer responded, "No. This is the first time that argument has ever been used." SR, p. 192. She further stated that it was her understanding from the testimony that "at the end of the day both entities maintain a complete and accurate copy of all the records." SR, p. 193.

Another person, who is identified in the transcript only as an "unknown female," commented that "our regulations . . . say you cannot bring a new argument to the Commission that you haven't raised at some time prior at the Commission, you know, at the hearing."[13] SR, pp. 200-01. The plaintiff's counsel protested that the preliminary draft issue was raised in the hearing on remand. SR, p. 202.

The commission's chairman asked the hearing officer whether any evidence introduced

---

[12] The transcript of the hearing identifies several commissioners simply as "A Commissioner," making it impossible to tell whether repeated comments were made by the same commissioner or additional commissioners.

[13] Section 1-21j-40 (b) of the Regulations of Connecticut State Agencies provides in relevant part that "no party or intervenor shall present any argument at the commission meeting at which the proposed final decision is considered unless such argument has been raised (1) at the hearing in the contested case; or (2) in a bill of exceptions or brief filed with the commission on or before the Wednesday of the week immediately prior to the meeting at which the proposed final decision is scheduled to be discussed and/or acted upon by the commission; or (3) in the proposed final decision itself."

at the hearing suggested that the records maintained in Montville were preliminary drafts. SR, p. 204. The hearing officer replied: "Well, no. I mean you can look at any evidence I guess and draw from it an argument that it was a preliminary draft, but I would say that is not an argument that was raised. The evidence that was submitted was not intended to elicit or to claim that exemption, so no. Then I would have addressed it." SR, p. 204.

Shortly after being assured that the preliminary draft exemption had not been raised at the hearing, the commission voted unanimously to approve the hearing officer's second report as its final decision upon remand. SR, pp. 207-08. As approved, it contained no findings of fact or conclusions of law regarding the preliminary draft exemption.

General Statutes § 4-179 (b) provides that "[a] proposed final decision made under this section shall be in writing and contain a statement of the reasons for the decision and a finding of facts and conclusions of law on each issue of fact or law necessary to the decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its findings." General Statutes § 4-180 (c) similarly provides in relevant part that "[a] final decision in a contested case shall be in writing or orally stated on the record and, if adverse to a party, shall include the agency's findings of fact and conclusions of law necessary to its decision, including the specific provisions of the general statutes or of regulations adopted by the agency upon which the agency bases its decision."

In the remand hearing in this case, the plaintiff distinctly raised the claim that the

preliminary draft exemption of General Statutes § 1-210 (b) (1) applied to the records it maintained. It presented evidence in support of that claim. The hearing officer and subsequently the commission were required to rule on that claim. Indeed, the hearing officer implicitly acknowledged the duty to address claims that had been presented to her when she said "I would have addressed it" if evidence had been presented. Based at least in part on the hearing officer's mistaken representation that the claim had not been raised before her, and the interjection of another person that the commission's regulations preclude raising an issue before the commission that was not raised before the hearing officer, the commission did not include in its final decision a ruling on the applicability of the preliminary draft exemption.

The evidence regarding the preliminary draft exemption is not as definitive as either party contends. Contrary to the plaintiff's argument, there is evidence that could support rejection of the claimed exemption. Contrary to the commission's argument, there is evidence that could support a finding of exemption. The plaintiff's substantial rights were prejudiced when the commission failed to rule on a claim that it had duly presented. See *Wend* v. *Board of Firearms Permit Examiners*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV 92-0518655 (April 26, 1993, *Maloney, J.*) (agency's failure to articulate decision substantially prejudiced plaintiff and required remand); *Fiolek* v. *Commissioner of Motor Vehicles*, Superior Court, judicial district of Hartford-New Britain at Hartford, Docket No. CV 96-0565998 (April 10, 1997, *Maloney, J.*) (case remanded for

hearing officer to write decision with set forth findings on statutory elements). The case is therefore remanded to the commission with direction that it consider the evidence and arguments on the existing record concerning the preliminary draft exemption and expressly decide whether the exemption applies to the records at issue.

D

Cushman's original request on July 25, 2013, had sought records from January 31, 2012, "to the present." ROR, p. 2. In its original decision, the commission ordered the plaintiff to disclose records from January 31, 2013, to May 1, 2014. ROR, p. 150. In its final decision upon remand, the commission ordered the disclosure of records from January 31, 2013 to the date of the final decision, which was issued on May 3, 2016. SR, p. 215. On appeal, the plaintiff asserts that the commission unilaterally extended the time frame covered by the request, without the plaintiff's consent. In a one-sentence argument, it states: "The Plaintiff is unaware of any authority by which the [commission] may extend the timeframe covered by a request for documents." Pl. Br., p. 20. The commission does not address this issue in its brief.

The court is not required to address issues that are inadequately briefed. *State* v. *Buhl*, 321 Conn. 688, 724, 138 A.3d 868 (2016). "Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly." (Internal quotation marks omitted.) Id.

In this case, the plaintiff merely asserts that it is "unaware" of any authority that applies to the facts of the case. It does not address General Statutes § 1-206 (b) (2), which authorizes the commission to "order the agency to provide relief that the commission, in its discretion, believes appropriate to rectify the denial of any right conferred by the Freedom of Information Act." It does not discuss the cases that have considered the limits of the commission's remedial authority, such as *Ethics Commission of Glastonbury* v. *Freedom of Information Commission*, 302 Conn. 1, 23 A.3d 1211 (2011). By foregoing any discussion of relevant statutes and cases, the plaintiff has abandoned this issue, and the court declines to address it.

CONCLUSION

For the reasons stated above, the plaintiff's appeal is dismissed as to the claims that the commission (1) failed to address DESPP's order not to produce the records, (2) changed the nature of the records request, and (3) exceeded its statutory authority in extending the period for which records must be disclosed. The appeal is sustained as to the plaintiff's claim that the commission failed to address the claim of exemption under the preliminary draft provision of General Statutes § 1-210 (b) (1), and the case is remanded to the commission with direction that it render decision specifically addressing that claim.

BY THE COURT,

434440

Sheila A. Huddleston, Judge