

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Robert Cushman,
Complainant(s)

against

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

Notice of Rescheduled
Commission Meeting

Docket #FIC 2012-345

February 14, 2013

This will notify you that the Freedom of Information Commission has rescheduled the above-captioned matter, which had been noticed to be heard on Wednesday, February 13, 2013 at 2 p.m.

The Commission will consider the case at its meeting to be held at the Freedom of Information Commission Hearing Room, 18-20 Trinity Street, 1st floor, Hartford, Connecticut, at **2:00 p.m. on Wednesday, March 13, 2013.**

Any brief, memorandum of law or request for additional time, as referenced in the January 15, 2013 Transmittal of Proposed Final Decision, should be received by the Commission on or before March 1, 2013.

By Order of the Freedom of
Information Commission

W. Paradis
Acting Clerk of the Commission

Notice to: Robert Cushman
Kevin M. Deneen, Esq.
Maria N. Elsdon, Esq.

2013-02-14/FIC# 2012-345/ReschedTrans/wrbp/KKR/LFS

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-345

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

January 15, 2013

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, February 13, 2013**. 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 February 1, 2013**. 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, the Commission requests that an **original and fourteen (14) copies** be filed **ON OR BEFORE February 1, 2013**. 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 **fourteen (14) copies** be filed **ON OR BEFORE February 1, 2013**, 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: Robert Cushman
Kevin M. Deneen, Esq.
Maria N. Elsdon, Esq.

2013-01-15/FIC# 2012-345/Trans/wrbp/KKR/LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert A. Cushman,

Complainant

against

Docket #FIC 2012-345

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

Respondents

January 14, 2013

The above-captioned matter was heard as a contested case on December 19, 2012, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. For purposes of hearing, this matter was consolidated with Docket #FIC 2012-373, Robert A. Cushman v. Chief, Police Department, Town of Enfield; and Police Department, Town of Enfield.

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 June 15, 2012, the complainant made a request to the respondents for a copy of all records, reports, audio, video and digital recordings and photographs related to a motor vehicle stop of David O'Brien and subsequent meeting at the police department between Mr. O'Brien and the respondents.
3. It is found that, by letter dated June 20, 2012, the respondents informed the complainant that his request had been received and was being reviewed, and that they would contact him once the records had been compiled.
4. By email dated June 26, 2012 and filed June 27, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (FOI) Act by failing to comply "promptly or otherwise" with the request for records described in paragraph 2, above.
5. 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.

6. 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 . . . (3) receive a copy of such records in accordance with section 1-212.

7. 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.”

8. It is found that the records, described in paragraph 2, above, are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

9. It is found that, via email dated August 1, 2012, the respondents notified the complainant that copies of the records he requested were available at a cost of \$119.00, and would be sent to him once payment was received. It is found that the complainant received such records from the respondents.

10. At the hearing in this matter, the complainant claimed that the respondents withheld certain records, or portions thereof, responsive to the request, described in paragraph 2, above. Specifically, the complainant stated that a portion of the video and audio taken by the dashboard camera of the police car, used in the motor vehicle stop, was not provided to him. In addition, the complainant stated that he had not received a copy of the audio of certain telephone calls made to the police station, or a copy of the video and audio of Mr. O’Brien’s filing of a complaint at the police station.

11. It is found that the entirety of the traffic stop was not recorded by the respondents, either because the officer did not record the entire traffic stop, or because the police car used in the traffic stop had the older in-car camera system installed in it, which is not as reliable as the newer system also being used by the respondents. At the hearing in this matter, the deputy police chief testified, however, that the entirety of the video that *was* recorded by the dashboard video camera was provided to the complainant.

12. With regard to records of telephone calls and video and audio of Mr. O'Brien at the police station, described in paragraph 10, above, it is found that no such records exist.

13. Based upon the testimony provided by the respondents at the hearing, which is found to be credible, it is found that the respondents provided the complainant with all records they maintain that are responsive to the request, described in paragraph 2, above.

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.



Kathleen K. Ross
Kathleen K. Ross
as Hearing Officer