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FREEDOM OF INFORMATION



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Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-535

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

Respondent(s)

April 30, 2015

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, May 27, 2015**. 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 May 15, 2015**. 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 May 15, 2015**. **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 May 15, 2015**, 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
Janis M. Small, Esq.

2015-04-30/FIC# 2014-535/Trans/wrbp/CMM/VB/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 2014-535

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

Respondents

April 14, 2015

The above-captioned matter was heard as a contested case on February 23, 2015, at which time the complainant and 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, on July 24, 2014, the complainant made a written request to the respondents for an extensive list of certain public records related to the motor vehicle stop of Carl Zemke that occurred on July 20, 2014, which resulted in a charge of driving under the influence referred to in Case Report No. 14-14355.
3. It is found that, by separate letters dated July 25, 2014, the respondents' senior records clerk informed the complainant that the copy of Case Report No. 14-14355 could not be released due to the pending status of the case. However, they would research the availability of any other requested records "not relating to this specific case" and contact the complainant when that research had been completed.
4. By letter dated August 11, 2014 and filed on August 13, 2014, the complainant appealed to this Commission, alleging that the respondents failed to promptly provide copies of certain records referenced in paragraph 2, above, in violation of the Freedom of Information Act.

5. At the hearing in this matter, the complainant indicated that the only records at issue in this appeal are: (a) dashboard camera recordings from the arresting officer's vehicle of the motor vehicle stop that occurred on July 20, 2014 and (b) dispatch call recordings from the date of the motor vehicle stop.

6. Section 1-200(5), G.S., defines "public records or files" as:

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:

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.

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, to the extent the requested dashboard camera and dispatch recordings exist, such records are public records within the meaning of §1-210(a), G.S, and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. At the hearing in this matter and in his post-hearing brief, the complainant contended that the respondents purposefully withheld the requested records and that he was given conflicting reasons as to why they had not been provided, including that certain dispatch recordings had not been preserved and that the motor vehicle stop was not recorded due to the nature of the stop.

11. It is found that, by letter dated, December 9, 2014, the respondents informed the complainant that with respect to the request for dashboard camera recordings, no such recordings existed for the arresting officer since his vehicle's older in-car camera system was inoperable at the time of the motor vehicle stop. The respondents also stated that due to a defective cable, the electronic recording system was not operating properly at all times during the month of July,

2014 and that on July 20th the system did not record dispatch calls. Therefore, the respondents asserted the requested records could not be provided because they did not exist.

12. At the hearing in this matter, the respondents did not claim any exemption to disclosure. Rather, the respondents reiterated their position set forth in the December 9, 2014 letter that the requested records do not exist.

13. In support of their claim that the requested records do not exist, the respondent, Wallingford Police Department, proffered testimony of two witnesses with knowledge of the Department's operations. First, the assigned Keeper of the Records testified, and it is found that, the respondents made a good faith determination that based upon internal communications within the Department that there were no dashboard camera recordings of the motor vehicle stop from the arresting officer's vehicle due to the older in-car camera system being inoperable at that time. Second, the Manager of Information Technology testified, and it is found that, there were on-going problems with the electronic recording system during the month of July, 2014. These problems included technical issues on July 18, 2014 that resulted in certain 911 calls, dispatch calls and regular calls not being recorded, and a complete power outage on July 20, 2014 that impacted the system and during which calls had not been recorded.

14. It is also found that, the respondents searched for the dispatch recordings on July 25, 2014 and made a good faith determination that no such recordings existed.¹

15. The complainant countered with testimony from a support technician with the vendor that services the respondents' electronic recording system, who stated that from July 14, 2014 through July 21, 2014, there were on-going technical issues with the respondents' electronic recording system that required off-site and on-site assistance from the vendor.

16. Moreover, it is found that based on the testimony of the complainant's witness that while one particular problem may not have impacted the recording of dispatch calls, there were multiple problems with the electronic recording system, including those issues reported on July 18, 2014 in which certain calls were not recorded and a power failure on July 20, 2014, which caused the electronic recording system to shut down and interrupted the recording of all calls.

17. It is further found that the credible testimony proffered at the hearing by respondents' witnesses is bolstered by documentary evidence submitted at the hearing that supports the respondents' assertions that there were on-going technical issues with their electronic recording system during the month of July, 2014.

18. Based upon the testimony and documentary evidence in this matter, it is found that the requested records were never created and therefore do not exist.

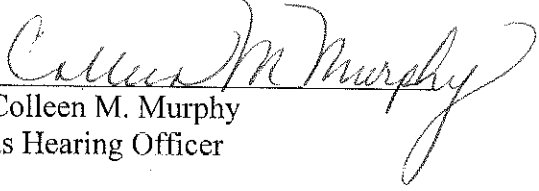
¹At the request of the hearing officer, the respondents submitted an affidavit detailing the timing of the search conducted in response to the request described in paragraphs 2 and 6, above. Such affidavit, dated March 2, 2015, has been marked by the hearing officer as respondents' Exhibit No. 6 (after-filed).

19. With regard to the complainant's allegation that the respondents delayed their search for the dispatch records from the date of the motor vehicle stop and then inadvertently destroyed those records, it is found that there is neither credible evidence in the record to support such a speculative allegation; nor is there any evidence that the non-recording of the motor vehicle stop was purposeful.

20. It is therefore concluded that the respondents did not violate the disclosure provisions of the Freedom of Information Act as alleged by the complainant.

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

1. The complaint is hereby dismissed.


Colleen M. Murphy
as Hearing Officer