



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 2013-479

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

February 1, 2016

Transmittal of Proposed Final Decision Dated February 1, 2016

In accordance with Sections 4-179 and 4-183(h) of the Connecticut General Statutes, the Freedom of Information Commission hereby transmits to you the proposed finding and decision dated February 1, 2016 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, March 9, 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 February 26, 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, the Commission requests that an **original and ten (10) copies** be filed *on or before February 26, 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 **eleven (11) copies** be filed *on or before February 26, 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: Robert Cushman
Ryan W. Jaziri, Esq.

FIC#2013-479/OSC RTrans/wrbp/TCB//LFS/2016-02-01

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

Report of Hearing Officer
Upon Remand

Robert Cushman,

Complainant

against

Docket #FIC 2013-479

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

Respondents

February 1, 2016

The above-captioned matter was heard as a contested case on March 4, and May 1, 2014, at which times the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint. On June 11, 2014, the Commission adopted a final decision in this matter. Notice of such final decision was mailed to the parties on June 12, 2014. The respondents filed an appeal of the final decision with the Superior Court on July 25, 2014. By order dated December 3, 2014, the Superior Court remanded this matter to the Freedom of Information (“FOI”) Commission to permit the parties to present additional evidence and argument and the Department of Emergency Services and Public Protection (“DESPP”) the opportunity to intervene. On April 28, 2015, a hearing was conducted pursuant to the Court’s order. DESPP did not move to intervene in this matter.

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 July 25, 2013, the complainant made a request to the respondents for certain records which included a copy of certain A44 reports¹.

¹ It is found that A44 reports are completed by an arresting officer and is a form that 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 DWI: what the operator ate; and when was the last time the operator consumed alcohol.

3. It is found that by letter dated August 5, 2013, the respondents informed the complainant that his request had been received and that he would be contacted once the records had been located and the respondents determined if any exemptions applied.

4. By letter dated August 5, 2013, the complainant appealed to this Commission, alleging that the respondents had denied him access to the requested records, and asked that the Commission order their immediate disclosure and any other relief deemed appropriate by the Commission.

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, (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. Any agency rule or regulation, or part thereof, that conflicts with the provisions 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 or of the Secretary of the State, as the case may be.

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

9. At the March 4, 2014 hearing on this matter, the parties agreed to limit the complaint to the disclosure of the following records:

- a. access to inspect summons forms from January 31, 2013 to the present;
- b. copies of A44 reports from January 31, 2013 to the present; and
- c. copies of the records related to nolloed cases for which the 13 month period triggering erasure has not expired from January 31, 2013 to the present.

10. It is found that as of the April 28, 2015 hearing in this matter, the respondents had provided the complainant with the records responsive to his request described in paragraph 9(a), above, and that the only records remaining at issue are those described in paragraphs 9(b) and 9(c), above (hereinafter “the records”).

11. With respect to the records, it is found that the originals are maintained by the “DESPP”. It is also found that in almost every instance, the respondents maintain a copy of the records for their own administrative or law enforcement purposes.

12. At the April 28, 2015 hearing and in their brief, the respondents contended that, pursuant to §29-10b, G.S., and the Resident Trooper Contract between the respondents and the State Police, the complainant is *required* to make his request for the records to the State Police and pay the sixteen dollar search fee associated with such request. The respondents further contended that, pursuant to the contract, all of the respondent police department’s records are maintained by DESPP, that DESPP is the *custodian* of *all* the respondent police department’s law enforcement records wherever they are maintained, and that to the extent the respondents maintain a duplicate copy of the records, they may be used by the local police officers only for law enforcement purposes.

13. It is found that this contention is shared by DESPP, and therefore, the respondents have not provided the complainant with access to the records even though they maintain a separate copy of records within their files and can make and provide a copy of the records from those files.

14. Section 29-10b, G.S., provides in relevant part that:

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.

15. It is found that the relevant portions of the Resident State Trooper contract between the State Police and the respondents state the following:

Section I.A.: '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 . . .'

Section I.D.: 'All Town police investigation records shall be maintained by the Department of Emergency Services and Public Protection. All investigation reports shall be prepared, formatted and submitted in the manner approved by State police.'

16. It is found that the contract, on its face, delegates the town's law enforcement authority specifically to the State Police, and requires reports to be maintained by the State Police. However, it is also found that the contract does not on its face delegate the town's FOI obligations to the State Police nor does it abrogate the towns' own record-keeping responsibilities.

17. It is concluded that, even when read in the context of the Resident State Trooper contract, there is nothing in §29-10b, G.S., that supports the respondents' claim that they are not required, under §§1-210(a) and 1-212(a), G.S., to provide a copy of the records upon request.

18. Based upon the findings and conclusions above, it is found that the respondents violated the disclosure provisions of §§1-210(a) and 1-212(a), G.S., by failing to comply with the complainant's records request described in paragraph 9(b) and 9(c), above.

19. With respect to the complainant's allegation that the respondents' compliance was not prompt within the meaning of §§1-210(a) and 1-212(a), G.S., the respondents explained, at the hearing on this matter, and it is found, that the respondents realized only after the first hearing in this matter, that the summons requested by the complainant, described in paragraph 9(a), above, would be subject to the erasure provisions, and therefore, those documents would have to be reviewed to extract only the non-erased summons for the complainant's review. However, that task had not been performed at the time of the May 1, 2014 hearing in this matter.

20. With respect to the records described in paragraph 9(c), above, the respondents explained that the delay resulted from their failure to fully understand how to conduct an accurate search to determine which of the nulled cases that fell within the scope of the complainant's request had actually been erased. The respondents explained that they discovered that it was better to seek the court for assistance, however by that time, several weeks after the March 4, 2014 hearing had already passed.

21. At the hearing on this matter, the respondents indicated that they had only recently received an accurate list from the court of the nulled cases that had been erased and would be

prepared to provide the complainant with the records related to the non-erased cases at some time shortly after the hearing.

22. It is found that while the respondents have made considerable efforts to comply with the complainant's request since the March 4, 2014 hearing, they have not explained what took place between the time the complainant made his request on August 5, 2013 and the March 4, 2014 hearing.

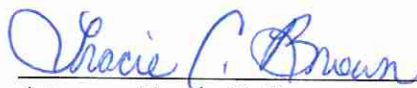
23. It is found, therefore, that the respondents unduly delayed compliance with the complainant's request.

24. Consequently, it is concluded that the respondents failed to promptly comply with the complainant's request and thereby violated the promptness provisions of §§1-210(a) and 1-212(a), G.S.

25. At the hearing on this matter, the parties agreed to extend the scope of the complainant's request to August 5, 2013 through May 1, 2014 since, as a result of the respondents' delay in compliance, many of the records the complainant originally sought are now subject to the erasure statute and cannot be disclosed.

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

1. The respondents shall, forthwith, provide the complainant with a copy of the following records, free of charge:
 - a. copies of all non-erased A44 reports from January 31, 2013 to May 1, 2014; and
 - b. copies of the records related to non-erased nulled cases for which the 13 month period has not expired from January 31, 2013 to May 1, 2014.
2. The respondents shall forthwith provide the complainant with access to inspect all non-erased summons forms from January 31, 2013 to May 1, 2014, and to the extent the complainant desires copies of any of those records, the respondents shall provide those copies free of charge.
3. Henceforth, the respondents shall strictly comply with the disclosure provisions of §§1-210(a) and 1-212(a), G.S.



Attorney Tracie C. Brown
as Hearing Officer