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Jeremy Shafer and the
American Civil Liberties Union,
Complainant(s)
against

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

Notice of Meeting

Docket #FIC 2015-581

April 19, 2016

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, lst floor, Hartford, Connecticut, at **2 p.m. on Wednesday, May 11, 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 April 29, 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, an **original and fourteen (14) copies** must be filed ***ON OR BEFORE April 29, 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 **fifteen (15) copies** be filed ***ON OR BEFORE April 29, 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: Attorney Dan Barrett
Attorney Bryan L. LeClerc

2016-04-19/FIC# 2015-581/Trans/wrbp/LFS//VB

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Jeremy Shafer and the American Civil Liberties Union,

Complainants

against

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

Respondents

Report of Hearing Officer

Docket #FIC 2015-581

April 12, 2016

The above-captioned matter was heard as a contested case on November 16, 2015, at which time the complainants and the 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 30, 2015, the complainants requested a copy of the following records:

> [a.] all records reflecting the Stratford Police Department's assessment, purchase, borrowing, or use of IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm. Your response should include–but not be limited to–all records showing the occasions on which each device was purchased, borrowed, or used; the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices;
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> [b.] all records reflecting the Stratford Police Department's assessment, purchase, borrowing, or use of mobile device forensics devices or software, such as are marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others. Your response should include— but not be limited

> to-all records showing the occasions on which each device or piece of software was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of such devices or software;
>
> [c.] all records reflecting the Stratford Police Department's assessment, purchase, borrowing, or use of any unmanned aerial vehicles, also known as drones. Your response should include- but not be limited to-all records showing the occasions on which a drone was purchased, borrowed, or used, as well as the terms of its purchase, borrowing, or use; and all policies, rules, guidance, or procedures governing the use of the drone; and
>
> [d.] all records showing applications made to, or amounts received from, any funding source or grant program for funds to be used for the purchase or use of:
>
> [1.] IMSI-catching, cell-site simulating, cell phone direction-finding, or cell phone eavesdropping devices such as Stingray, Gossamer, Triggerfish, Kingfish, Amberjack, Harpoon, or Hailstorm;
>
> [2.] mobile device forensics devices or software, such as are marketed by Cellebrite, Paraben, Katana Forensics, NowSecure, AccessData and others; and
>
> [3.] drones.

3. It is found that on August 7, 2015, the respondents informed the complainants that the requested records "to the extent they even exist, would be exempt from disclosure under [§1-210(b)(3), G.S.]"

4. By letter filed September 8, 2015,[1] the complainants appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to promptly provide them with the records he requested.

5. Section 1-200(5), G.S., provides:

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[1] Section 1-206(b)(1), G.S., requires a notice of appeal to be filed with the Commission not later than 30 days after the denial of any right conferred by the FOI Act. Thirty days after the respondents denied the complainants' request was September 7, 2015. Section 1-21j-15 of the Regulations of Connecticut State Agencies provides that computation of time periods shall end on the last day of the period so computed, unless it is a day on which the Commission is closed, in which event the period shall run until the end of the next following business day. The Commission was closed in observance of Labor Day on September 7, 2015; therefore, the complainants needed to file their notice of appeal by Tuesday, September 8, 2015, which was the day they did file such notice.

> 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.

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

7. Section 1-212(a), G.S., provides in relevant part: "Any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record."

8. It is concluded that the records requested by the complainants, to the extent that they exist, are public records within the meaning of §§1-200(5), 1-210(a), and 1-212(a), G.S.

9. At the hearing in this matter, the respondents refused to confirm or deny that they maintain records that are responsive to the complainants' request. The respondents claimed that to do so would disclose an investigatory technique and would encourage criminal behavior. Nevertheless, upon an order by the hearing officer after the hearing concluded, the respondents submitted responsive records to the Commission for an in camera inspection.

10. Such records shall be identified as IC-2015-581-1 through IC-2015-581-8.

11. The respondents claim the records are exempt from disclosure pursuant to §1-210(b)(3)(E), G.S., which provides that disclosure is not required of "Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of ... (E) investigatory techniques not otherwise known to the general public[.]"

12. The respondents rely on Kareem Batts v. Chief, Police Department, City of Waterbury, docket #FIC 2006-402 (2007), which found that disclosure of records described as "Surveillance and Undercover Operations – Policy and Procedures," and provided to the Commission for in camera inspection, would reveal investigatory techniques not otherwise known to the general public because such records would reveal police department techniques for surveillance of suspects and undercover operations.

13. It is found, however, that the complainants failed to prove that the investigatory techniques at issue in Batts are analogous to the ones at issue in this matter with respect to whether such techniques are known to the general public.

14. Moreover, it is found that the respondents in this case testified only in general terms that disclosure would interfere with law enforcement and would allow criminals to adjust their behavior accordingly.

15. It is found, based on the complainant's exhibits, and upon careful review of IC-2015-581-1 through IC-2015-581-8, that disclosure of the records identified as IC-2015-581-1 through IC-2015-581-8 would not result in the disclosure of investigatory techniques not otherwise known to the general public. In particular, complainant's Exhibit E, which was entered into evidence during the hearing in this matter, is a news story published by a local TV station about law enforcement's widespread use of a software program to discover the contents of cell phones.

16. It is concluded, therefore, that §1-210(b)(3)(E), G.S., does not exempt IC-2015-581-1 through IC-2015-581-8 from disclosure.

17. It is concluded that the respondents violated the FOI Act as alleged.

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

1. Forthwith, the respondents shall promptly provide to the complainants, free of charge, an unredacted copy of all records responsive to their request. In addition, the respondents shall conduct a diligent search for any policies, rules, guidance, or procedures governing the use of any of the devices identified by the complainants, and promptly provide a copy of any such records to the complainants, free of charge. If the respondents do not maintain any such records, they shall inform the complainants of that fact in written correspondence.

2. Henceforth, the respondents shall strictly comply with §§1-210(a) and 1-212(a), G.S.

Lisa Fein Siegel
as Hearing Officer