

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2017-0342

Commissioner, State of Connecticut,
Department of Emergency Services and
Public Protection; and State of Connecticut,
Department of Emergency Services and
Public Protection,

Respondents

May 9, 2018

The above-captioned matter was heard as a contested case on August 24, 2017, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. Subsequently, on her own motion, the Hearing Officer reopened and consolidated this matter with Docket #FIC 2017-0596; Robert Cushman v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection. A second hearing was held on December 11, 2017, at which time the complainant and the respondents appeared and presented additional testimony, exhibits and argument on the consolidated matters.

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 May 31, 2017, and addressed to the respondents' Public Information Office, the complainant requested records, including, but not limited to, incident reports, photographs, and audio and video recordings, which pertained to the arrest of a particular individual on September 21, 2016, and assigned Case No. 16-00527599 ("May 31st request"). The complainant submitted a check in the amount of \$16.00 with his request.
3. It is found that, two weeks later, by letter dated June 8, 2017, the respondents' Legal Affairs Unit informed the complainant that his May 31st request was referred to its office for review and processing, and that the complainant would be notified as soon as possible of the results of its review as well as any fees that may be due.

4. By letter dated June 12, 2017, and filed June 15, 2017, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information (“FOI”) Act by failing to promptly provide the records he requested in his May 31st request.

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

“[p]ublic 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:

[e]xcept 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 . . . (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 requested by the complainant are public records within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

9. It is found that, by email dated July 6, 2017, the Legal Affairs Unit notified the complainant that there were no MVR or booking room videos associated with Case No. 16-00527599. The Legal Affairs Unit also informed the complainant that no body camera footage was available, as state troopers do not wear body cameras. In addition, the Legal Affairs Unit informed the complainant that the respondents would continue to provide the complainant with updates and/or the materials requested.

10. It is found that, by letter dated July 10, 2017, the Legal Affairs Unit provided the complainant with copies of audio recordings responsive to the May 31st request. The Legal Affairs Unit also informed the complainant that it was still awaiting a response from the respondents’ Reports and Records Unit regarding the complainant’s request for a copy of the investigative report. As soon as it received and reviewed the report, a copy would be provided to the complainant. In addition, the Legal Affairs Unit informed the complainant that the Reports and Records Unit is currently experiencing a substantial backlog, and requested that the complainant withdraw his complaint in this matter.

11. It is found that, by email dated July 21, 2017, the Legal Affairs Unit confirmed with the complainant that the only part of the May 31st request that remained outstanding was the police report. The Legal Affairs Unit also suggested to the complainant that, given the considerable backlog that exists in obtaining police reports pursuant to a FOI Act request, the complainant may wish to issue a subpoena to the Reports and Records Unit to obtain the report quicker.

12. It is found that, by email dated August 15, 2017, counsel for the respondents followed-up with the complainant regarding the status of his May 31st request and complaint in this matter. Counsel emphasized that the backlog for responding to FOI Act requests is approximately 13 months since many FOI Act requests are handled in chronological order.

13. With respect to the complainant's request for any video recordings, at the August 24, 2017 hearing in this matter, the respondents contended, through a witness, that a search for such recordings was conducted, but that no recordings were located. The witness did not personally conduct the search, nor was he able to testify as to the nature and scope of such search. Thus, the hearing officer ordered the respondents to provide to the Commission an affidavit from the individual who conducted the search regarding the nature and scope of such search.

14. On September 7, 2017, the respondents submitted the affidavit of State Trooper Paul DaCruz, Evidence Officer at Troop H in Hartford. In his affidavit, Trooper DaCruz attested that, with respect to the request for copies of all video recordings that may exist in connection with Case No. 16-00527599, he "searched the evidence files at Troop H to see if any evidence was seized or preserved in the matter bearing CFS #16-00527599" and that his "search revealed that no videos of any nature had been placed into evidence for that case." He attested that he "also checked the computer reporting system and again found no videos for that case." He noted that "[t]he retention period for video tapes as well as video downloaded directly to our server is ninety (90) days. The videos are recycled (taped over) after that time period. In this matter, the request was made nearly nine (months) after the subject accident occurred."¹

15. It is found that as of the December 11, 2017 hearing in this matter, the respondents had yet to search for records responsive to the complainant's May 31st request, except for the audio and video recordings, described in paragraphs 9, 13 and 14, above.

16. With respect to the issue of promptness, the Commission has held that the meaning of the word "promptly" is a particularly fact-based question. In Advisory Opinion #51, In the Matter of a Request for Declaratory Ruling, Third Taxing District of the City of Norwalk, Applicant (Notice of Final Decision dated January 11, 1982), the Commission advised that the word "promptly," as used in §1-210(a), G.S., means quickly and without undue delay, taking into consideration all of the factors presented by a particular request. The Commission also gave the following guidance:

¹ The affidavit has been marked as Respondents' Exhibit 8 (after-filed).

The Commission believes that timely access to public records by persons seeking them is a fundamental right conferred by the Freedom of Information Act. Providing such access is therefore a primary duty of all public agencies, and should be considered as much a part of their mission as their other major functions. Although each agency must determine its own set of priorities in dealing with its responsibilities within its limited resources, providing access to public records should be considered as one such priority. Thus, it should take precedence over routine work that has no immediate or pressing deadline.

17. The advisory opinion goes on to describe some of the factors that should be considered in weighing a request for records against other priorities: the volume of records requested; the time and personnel required to comply with a request; the time by which the person requesting records needs them; the time constraints under which the agency must complete its other work; the importance of the records to the requester, if ascertainable; and the importance to the public of completing the other agency business without the loss of the personnel time involved in complying with the request.

18. The respondents argued that in determining the issue of promptness, the Commission should consider the respondents' caseload, shortages in staffing, limited budgetary resources, and that the protection of the public's safety and health is their priority.

19. It is found that:

- a. the Reports and Records Unit is the central repository for all Connecticut State Police incident reports;
- b. the Reports and Records Unit receives, logs and processes into the Unit's records management database, approximately 60,000 incident reports annually (e.g., motor vehicle infraction reports, reports that include criminal charges), from the various State Police Troops and specialized units;
- c. copies of the incident reports (and associated documents) are received by the Reports and Records Unit in electronic form (e.g., narrative portion of incident reports) and/or in physical form (e.g., attachments to reports), and, as of the December 11th hearing, there were approximately 170 boxes of reports that had yet to be logged and filed;
- d. as of the December 11th hearing, the backlog of processing time for logging in new incident reports was approximately 11 to 12 months;
- e. all requests for reports under the FOI Act are processed chronologically, in the order that they are received in the Reports and

Records Unit, with exception (e.g., records requests received via subpoena are given priority);

- f. as of the December 11th hearing, the backlog for processing records requests received by mail, which includes the review and redaction of the responsive records, was approximately 22 months; and
- g. the Reports and Records Unit has four full-time processing technician positions, and is periodically assisted by durational office assistants and temporary retiree workers.

20. At the December 11th hearing, the respondents' witness also testified that an incident report must be logged and processed into the Unit's database before such report can be copied and reviewed for disclosure. She testified that the logging and processing of an incident report includes validating that all records associated with such report were received by the Reports and Records Unit. Once the processing technicians have validated that all such records have been received, then the file is considered to be a "complete file," and the Unit can proceed to review records for public disclosure.

21. It is found that the complainant's request was straightforward, well-defined, and applies to a specific incident.

22. It is found that the Reports and Records Unit is severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts.

23. Nevertheless, it is found that the *approximately two-year* wait before providing records in response to a simple request pursuant to the FOI Act is unacceptable. See also Docket #FIC 2016-0775; Stephen Williams v. Dora Schriro, Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (March 22, 2017) in which this Commission found that the respondents' Report and Records Unit estimated compliance with the complainant's request of one and one half to two years (due to an overwhelming work load and a reduction in staffing) was unacceptable and concluded that the respondents had violated §§1-210(a) and 1-212(a), G.S., of the FOI Act for failing to provide the requested records in a prompt manner.

24. It is found, therefore, that the respondents failed to provide records to the complainant in a prompt manner.

25. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

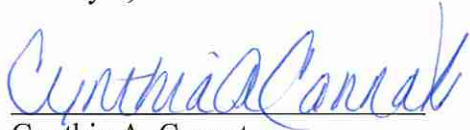
The following order by the Commission is hereby recommended on the basis of the record concerning the above-captioned complaint:

1. Within two weeks of the transmittal of the notice of final decision in this matter, the

respondents' Reports and Records Unit shall undertake a search for records responsive to the complainant's request described in paragraph 2 of the findings, above. If the Reports and Records Unit discovers any responsive records, then it shall provide such records to the respondents' Legal Affairs Unit for review. Within two weeks of receipt of the requested records from the Reports and Records Unit, the Legal Affairs Unit shall provide the requested records, redacted if necessary, to the complainant, free of charge.

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

Approved by Order of the Freedom of Information Commission at its regular meeting of May 9, 2018.



Cynthia A. Cannata
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

ROBERT CUSHMAN, 21 New Britain Avenue, Suite 218, Rocky Hill, CT 06067

COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; AND STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION, c/o Assistant Attorney General Stephen R. Sarnoski, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105



Cynthia A. Cannata
Acting Clerk of the Commission