

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

FINAL DECISION

Robert Cushman,

Complainant

against

Docket #FIC 2017-0596

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 December 11, 2017, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The matter was consolidated with Docket #FIC 2017-0342; 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, which matter was heard on August 24, 2017, and subsequently reopened sua sponte by the Hearing Officer.

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 September 14, 2017, and addressed to the respondents' Public Information Office, the complainant requested numerous records, including, but not limited to, incident reports, telephone calls, and audio and video recordings, which pertained to a single incident that occurred on July 27, 2017 ("September 14<sup>th</sup> request"). The complainant provided the respondents with the names of the defendant and co-defendants, list of charges, police case number, date of incident, time of incident, time of arrest, location, names of officers and name of the police department. The complainant also informed the respondents that he was appointed special public defender for one of the defendants and requested that any fees be waived pursuant to §1-212(d)(5), G.S.
3. It is found that, by letter dated September 20, 2017, the respondents' Legal Affairs Unit informed the complainant that his September 14<sup>th</sup> 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 September 26, 2017, and filed October 3, 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 September 14<sup>th</sup> 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 letter dated November 1, 2017, the Legal Affairs Unit notified the complainant that no materials responsive to his September 14<sup>th</sup> request were located when a search was conducted utilizing the information provided by the complainant in such request. It is found that the Legal Affairs Unit searched the respondents’ database utilizing the names of the defendants and officers, and the date and location associated with the July 27, 2017 incident (“July 27<sup>th</sup> incident”).

10. It is found that sometime between November 1, 2017, and November 28, 2017, the Legal Affairs Unit conducted an additional search for records and discovered that the Statewide Narcotics Task Force possessed a report associated with the July 27<sup>th</sup> incident.

11. It is found that on November 28, 2017, the Legal Affairs Unit emailed the complainant and informed him that a Statewide Narcotics Task Force report was located. The Legal Affairs Unit also informed the complainant that it had submitted a request to the Reports and Records Unit for a copy of such report and requested that the complainant submit the statutorily required \$16 search and copy fee. In addition, the Legal Affairs Unit informed the complainant that the Reports and Records Unit had a substantial backlog, and suggested that the complainant contact the Hartford Police Department (“HPD”) for additional information as HPD was the lead agency involved in the July 27<sup>th</sup> incident.

12. It is found that on December 7, 2017, the complainant emailed the respondents, inquiring whether there were any audio or video recordings responsive to the September 14<sup>th</sup> request. The respondents emailed the complainant the following day and informed him that the respondents did not have any such recordings.

13. It is found that at the December 11, 2017 hearing in this matter, the complainant provided the respondents with the requisite \$16 statutory fee. See also 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 (January 10, 2018) in which this Commission concluded that §1-212(d), G.S., on its face only provides a waiver of the fees established in §1-212(a), G.S., not the waiver of fees provided for in other statutes such as §29-10b, G.S., which sets forth the search and copy fees for accident or investigative reports.

14. 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:

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.

15. 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.

16. 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.

17. It is found that the Legal Affairs Unit has a total of eight positions when fully staffed. It is also found that the breadth of the Legal Affairs Unit's responsibilities is vast and includes providing legal support to approximately 1,800 managers and employees, the Office of the Attorney General and private counsel handling agency matters as well as responding to the hundreds of records requests it receives a year.

18. 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 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 11<sup>th</sup> hearing, there were approximately 170 boxes of reports that had yet to be logged and filed;
- d. as of the December 11<sup>th</sup> 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 11<sup>th</sup> 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.

19. At the December 11<sup>th</sup> 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.

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

21. It is found that the respondents are severely hampered by an overwhelming workload exacerbated by reduced staffing from budget cuts.

22. 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.

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

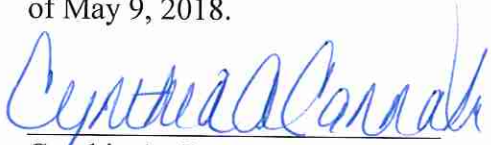
24. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S.

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**, Law Offices of Robert A. Cushman, LLC, 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