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FREEDOM OF INFORMATION



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William Scaringe,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2012-725

Commissioner, State of Connecticut, Department of
Emergency Services and Public Protection, Division of State
Police; and State of Connecticut, Department of Emergency
Services and Public Protection, Division of State Police,
Respondent(s)

July 19, 2013

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, August 14, 2013**. 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 August 2, 2013**. 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 August 2, 2013**. **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 **fourteen (14) copies** be filed **ON OR BEFORE August 2, 2013**, 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: William Scaringe
Neil Parille, Esq.

7/19/13/FIC# 2012-725/Trans/wrbp/KKR//GFD

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

William Scaringe,

Complainant

Docket # FIC 2012-725

against

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

Respondents

July 16, 2013

The above-captioned matter was heard as a contested case on June 13, 2013, at which time the complainant and the respondents appeared 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, by letter dated July 12, 2012, the complainant requested a copy of a “video captured on a state police vehicle dash mounted camera operated by...Trooper [Poissoni] ...of the automobile accident collision which occurred on July 5, 2012 at 1455 hours....” (the video). It is found that, in such letter, the complainant further requested that the video be preserved.
3. It is found that, on approximately July 15, 2012, Master Sgt. Michael O’Toole of the State Police (O’Toole) received a request to preserve the video from the respondents’ legal affairs unit, and he, in turn, requested from Trooper Poissoni (Poissoni) the video tape that would have included all incidents recorded from July 3, 2012 to approximately July 27, 2012. It is found that the video tape was received by O’Toole from Poissoni, and that O’Toole then stored the tape in an evidence room.

4. It is found that, by letter to the complainant dated July 20, 2012, the respondents' legal affairs unit acknowledged receipt of the request, described in paragraph 2, above, and further informed the complainant that such request was being reviewed and processed. It is further found that the legal affairs unit forwarded a copy of the request, described in paragraph 2, above, to O'Toole, and that O'Toole then sent the video tape, described in paragraph 3, above, to the forensic lab to be copied. It is found that O'Toole did not view the video tape prior to sending it to the lab.

5. It is found that, by letter dated November 30, 2012, the complainant, having not received a copy of the video, again requested such record.

6. It is found that by letter dated December 27, 2012, the respondents provided the complainant with a disc, containing what they believed was a copy of the video. However, it is found that the disc did not contain the requested video footage, but rather, contained video footage of a different incident. It is found that, by letter dated January 2, 2013, the complainant informed the respondents of this.

7. By letter dated December 27, 2012, and filed on December 31, 2012, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act, by failing to comply with the request, described in paragraph 2, above, and further alleging that such "request was not timely denied...in accordance with ...§1-206(a)."

8. 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.

9. 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.

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

11. It is found that the video requested by the complainant, to the extent it exists, is a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

12. It is found that the video tape, described in paragraph 3, above, is a VHS tape utilized in connection with an older video recording system used, but in the process of being replaced by, the respondents. It is found that the video recorder that was installed in Poissoni's police vehicle on July 5, 2012, malfunctioned to the extent that it failed to electronically record the date and time of the video footage recorded on the video tape. It is found that, because of such malfunction, three different individuals reviewed the video tape, including O'Toole, in an effort to locate the requested video on the video tape.

13. It is found that the video tape contains video footage of many different incidents and that there is no blank space on such tape that might suggest that some portion of the tape had been erased or deleted. O'Toole testified, credibly, at the hearing in this matter that, in his opinion, no video recording was made of the accident, described in paragraph 2, above, because the video recording device in the trooper's vehicle likely was not activated at the time of the accident.

14. The complainant, however, points to a letter from the respondents legal affairs unit, dated February 27, 2013, in which they informed the complainant that the video he requested "no longer exists," and another letter, dated April 2, 2013, in which they informed the complainant that there was an "equipment malfunction," resulting in "the wrong accident...in the slot for the time period you requested," as proof that the video existed at one time but was since improperly destroyed by the respondents. He also asserted, during his closing argument, that he is certain that the video existed at one time because Poissoni told him that the incident was recorded.

15. However, it is found that O'Toole's testimony, as described in paragraph 13, above, that no video existed, is the more reliable evidence. Moreover, even if the video existed at one time and presently no longer exists, it is concluded that jurisdiction over the retention and destruction of public records does not rest with this Commission, but rather with the State's Public Records Administrator, pursuant to §11-8a, G.S., and the applicable State's Attorney, as provided by state statute.

16. Finally, the complainant asserts that the respondents failed to timely deny his request, in accordance with §1-206(a). G.S.

17. Section 1-206(a), G.S., provides, in relevant part:


Any denial of the right to inspect or copy records provided for under section 1-210 shall be made to the person requesting such right by the public agency official who has custody or control of the public record, in writing, within four business days of such request....Failure to comply with a request to so inspect or copy such public record within the applicable number of business days shall be deemed to be a denial.

18. As set forth in the findings of fact in paragraphs 3, 4 and 6, above, the respondents did not deny the request, described in paragraph 2, above, but rather attempted to comply with such request. Accordingly, it is found that, under the facts and circumstances of this case, §1-206(a), G.S., was not applicable.

19. Based upon the foregoing, it is concluded that the respondents did not violate the FOI Act as alleged in the complaint.

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

1. The complaint is dismissed.


Kathleen K. Ross
as Hearing Officer