



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
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Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-286

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

March 13, 2015

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, April 8, 2015**. 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 March 27, 2015**. 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 March 27, 2015**. **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 March 27, 2015**, 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
Timothy P. O'Neil, Esq.

2015-03-13/FIC# 2014-286/Trans/wrbp/VRP//LFS

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Robert Cushman,

Complainant

against

Docket #FIC 2014-286

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

Respondents

March 13, 2015

The above-captioned matter was heard as a contested case on February 17, 2015, at which time the complainant 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. By letter of complaint filed May 9, 2014, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by denying him access to certain public records.
3. It is found that by letter dated April 11, 2014, the complainant requested a copy of

... all records, reports, audio, video, and digital recordings, mobile recordings, dashboard recordings, body-cam videos, and photographs for the below referenced matter, including but not limited to all incident reports, accident reports, A-44 report and any attachments, test results, video, body-cam video, audio, and digital recordings in the barracks, booking room, and processing room, MVR with audio, mobile video and digital recordings, dashboard audio, video and digital recordings, and all video, body-cam video, audio and digital recordings, including all officer contacts with the dispatch, and including any and all recordings involving third party's contacts or attempts to contact the defendant, including but not limited to audio, video, body-cam video, and digital recordings in the police station and over the phone, color photographs, all property seized, and all documents,

including all tapes, transcriptions or other recordings of all telephone calls to the Manchester Police Department from any party or witness reporting or informing of this incident, including all incident reports, dispatcher recordings, dispatcher tapes, all records, recordings, or broadcasts concerning this incident by any law enforcement agency involved, all handwritten, typewritten or any other notes, including rough notes transcribed by any officer in connection with this case, and any and all other records, reports, any and all samples (whether or not actually used in testing), all logs in connection with any testing devices, statements, any and all recordings including but not limited to any police department or tape recordings and videotapes, or mobile tape, test results, video, body-cam video, audio and digital recordings in the barracks, booking room, and processing room, mobile video and digital recordings, dashboard audio, video, body-cam video and digital recordings, CDs, and DVDs and color photographs, including all officer contacts with the dispatch pertaining to this case, including any and all recordings involving third party's contacts or attempts to contact the defendant, including but not limited to audio, video, body-cam video, and digital recordings in the police station and over the telephone, any and all records of the certification and all recertifications, revocations, and statements of the training experience of Jim Graham, Badge No. 2592 as the operator of the Alcotest 9510, any and all certifications and any recertifications or revocations thereof for the instructor to whom Jim Graham, Badge no. 2592 demonstrated operation of the Alcotest 9510, suspensions or revocations thereof for said instructor, all certifications, examinations and repair/recalibration log book, Datalogger and Errorlogger, including the printout for each and every test and external standard performed on the Alcotest 9510, Serial No.: ARBD-0103, used at the Manchester Police Department from February 1, 2014 to April 11, 2014, any qualifications for administration of field sobriety tests of Jim Graham, Badge No. 2592, certification and recertifications for administration of field sobriety tests of Sergeant Hughes, any and all periodic reviews and performance evaluations for Jim Graham, Badge No. 2592, Sergeant Hughes, Officer Desso and PSA Litwin and any and all disciplinary matters against Jim Graham, Badge no. 2592 Sergeant Hughes, Officer Desso, and PSA Litwin, of the Alcotest 9510, a copy of the Manchester Police Department's administrative and organizational manual files and folders relating to equipment turn-in and out-processing, recording machines, motor vehicle recording equipment, traffic law enforcement, misdemeanor and infractions, issuing a summons, motor vehicle seizure and removals, liquor and drugs statement of police, driving while intoxicated procedures, confiscation of operator license, traffic

stop procedures, arrest procedures, searches and seizures, intoxicated or incapacitated persons. This request is being made pursuant to Connecticut General Statutes Sections 1-200 et seq. of the Freedom of Information Act.

Regarding:

Name of Defendant: Mark D. Eddy
Charge: C.G.S. §14-227a – Operation Under the Influence, C.G.S. §14-12(a) – Unregistered Vehicle, C.G.S. §14-218a – Traveling at an Unreasonable Speed
Case No.: M201402968
Date of Incident: March 29, 2014
Location: Main Street, Manchester, Connecticut
Officers: Jim Graham, Badge No. 2592
Sergeant Hughes
Officer Desso
PSA Litwin
Police Department: Manchester

4. It is found that, a few days later, on April 17, 2014, the complainant also subpoenaed, for an administrative hearing scheduled for April 28, 2014, many of the same records from the respondents, seeking, in connection with the arrest of the same individual (Mark Eddy):

1. Any and all dispatcher recordings pertaining to Manchester police Department Case No.: 2968.
2. Any and all audio, video, and digital recordings, including but not limited to, audio, video, and digital recordings of all dispatch, the motor vehicle stop, the barracks, the arrest, the police car, transportation, processing, the booking, the chemical alcohol testing, telephone calls, and the holding cell, pertaining to Manchester Police Department Case No.: 2014-2968.
3. Any and all photographs pertaining to Manchester Police Department Case No.: 2014-2968.
4. Any and all electronic recordings pertaining to Manchester Police Department Case No.: 2014-2968.
5. Any and all chemical alcohol test results, samples, and recordings pertaining to Manchester Police Department Case No.: 2014-2968.

6. The original and three (3) certified copies of any qualifications for administration of field sobriety tests of officer Jim Graham, Manchester Police Department, Badge No.: 2592.
7. The original and three (3) certified copies of the certification, and any and all recertifications, revocations, periodic reviews, performance evaluations, and statement of the training experience of officer Jim Graham of the Manchester Police Department, Badge No.: 2592 as the operator of the Alcotest 9510 Serial Number ARBD-0103 in accordance with Regulations of State Agencies Section 14-227a-5b, 14-227a-6b, and 14-227a-10b.
8. All periodic reviews and performance evaluations and any and all disciplinary matters of Jim Graham of the Manchester police Department, Badge No.: 2592.
9. All police reports, records, notes, files, and field notes pertaining to Manchester Police Department Case No.: 2014-2968.
10. The original and three (3) certified copies of any and all certifications and any recertifications, suspensions, or revocations thereof for the instructor to whom Officer Jim Graham of the Manchester Police Department, Badge No.: 2592, demonstrated operation of the Alcotest 9510 used at the Manchester Police Department, in accordance with the Regulations of Connecticut State Agencies Section 14-227a-10b.
11. The original and three (3) certified copies of all certifications, examinations and repair/recalibration log book, Datalogger and Errorlogger, including the printout for each and every test, and external standard performed on the Alcotest 9510 Serial Number ARBD-0103 from February 1, 2014 through and including April 17, 2014 in accordance with Regulations of Connecticut State Agencies Section 14-227a-8b and 14-227a-10b.
12. The original and three (3) certified copies of the manufacturer's operating instructions and any and all modifications thereto for the Alcotest 9510 Serial No. ARBD-0103 pursuant to 14-227a-10b.
13. All records of the make and model of the speed monitoring device, the operator's manual for said device, service manual for said device, Detective Jim Graham's, Badge No.: 2592, speed monitoring device log, FCC license under which said speed monitoring device is operated, tuning forks, speed monitoring device results, approval of the device by the Department of

Emergency Services and Public Protection or other entity, trainee instructional manual for said device, Detective Jim Graham's, Badge No.: 2592, training experience in its operation, all test results of said speed monitoring device unit, all calibrations of said speed monitoring device, year, make, model and vehicle identification number (VIN) of the police car, all speedometer calibrations for said vehicle, and vehicle maintenance records.

5. It is found that the respondents made the records responsive to the subpoena available to the complainant on April 25, 2014, and that the complainant picked them up from the Manchester Police Department.

6. It is found that it was reasonable for the respondents to prioritize their response to the April 17, 2014 subpoena over the April 11, 2014 FOI request, given that the subpoenaed records were to be produced for an April 28, 2014 administrative hearing at the Department of Motor Vehicles.

7. It is found that the respondents also reasonably believed that they had satisfied all of the complainant's records request, notwithstanding that the FOI request had been made in somewhat broader (and certainly more difficult to read) language, and related to some police personnel who were not the subject of the subpoenaed records.

8. It is also found, however, that, after the complainant filed his complaint in May, the respondents made a detailed comparison, in the form a spreadsheet, of the records requested in the April 11, 2014 FOI request and the April 17 subpoena, and gathered the additional records, to the extent they existed, that were responsive to the FOI request.

9. It is found that it is the respondents' customary business practice to notify the complainant by telephone that records are available, and offer to leave the records at the front window to pick up.

10. It is also found, however, that the respondents offered no other evidence to prove that they had actually notified the complainant that the records sought in the April 11, 2014 FOI request were available for pickup by him, or that the records had in fact been left at the front window of the Manchester Police Department.

11. It is also found that the complainant did not pick up the records requested in the April 11, 2014 FOI request, even if they had in fact been left at the front window of the Manchester Police Department for him.

12. However, it is also found that, by July 30, 2014, all of the records responsive to the complainant's April 11, 2014 request that existed and were in the custody of the respondents were provided to the complainant.

13. 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.

14. 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. (Emphasis added).

15. 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.”

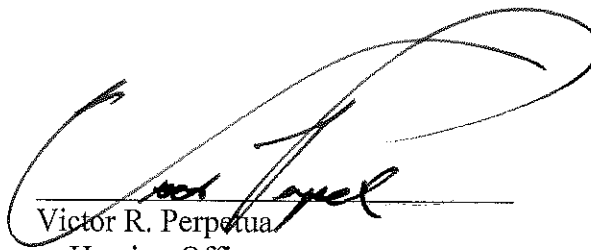
16. It is found that the records provided to the complainant are public records, within the meaning of §§1-200(5) and 1-210(a), G.S.

17. It is found that, although there was certainly some miscommunication between the parties, and some delay in providing all of the records within the ambit of the complainant’s April 11, 2014 FOI request, such delay was reasonable under the circumstances, considering the breadth and density of the April 11, 2014 request, and the substantial overlap between the April 11, 2014 FOI request and the records sought and provided in response to the April 17, 2014 subpoena.

17. 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 complainant is dismissed.



Victor R. Perpetua
as Hearing Officer