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FREEDOM OF INFORMATION



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Sylvester Walker,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2014-939

Chief, Police Department, City of Waterbury; Police
Department, City of Waterbury; and City of Waterbury,
Respondent(s)

July 30, 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, August 26, 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 August 14, 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 August 14, 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 **fifteen (15) copies** be filed **ON OR BEFORE August 14, 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: Sylvester Walker
Gary S. Roosa, Esq. & Kevin J. Daly, Jr., Esq.
cc: Craig Washington

2015-07-30/FIC# 2014-939/Trans/wrbp/CAL/VDH

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Sylvester Walker,

Complainant

against

Docket #FIC 2014-939

Chief, Police Department, City of Waterbury;
Police Department, City of Waterbury and
City of Waterbury,

Respondents

July 21, 2015

The above-captioned matter was heard as a contested case on July 14, 2015, at which time the complainant and the respondents appeared and presented testimony, exhibits and argument on the complaint. The complainant, who is incarcerated, appeared via teleconference, pursuant to the January 2004 memorandum of understanding between the Commission and the Department of Correction. *See* Docket No. CV 03-0826293, Anthony Sinchak v. FOIC, Superior Court, J.D. of Hartford at Hartford, Corrected Order dated January 27, 2004 (Sheldon, J.).

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 October 8, 2014, the complainant made a request to the respondents for copies of records of: a) "any and all radio communications between officer Lovallo (Charlie 1) and officer Mauriello (Charlie 2) back to dispatch between the time of 1:45 AM and 2:02 AM on 4-19-12"; and b) "the identification number of officer Lovallo'[s] taser and cartridge, so I can get the time it was discharged..." (both requests together being for the "requested records").
3. It is found that, by letter dated October 15, 2014, Sgt. Dethlefsen of the respondent Police Department acknowledged the complainant's request. His letter also stated that the respondents were unable to make a copy of the radio transmissions due to "an issue with the hard drive." Finally, Sgt. Dethlefsen's letter provided the serial number of the taser, but stated that "the number for the cartridge could not be located...."

4. By letter of complaint dated October 28, 2014, and filed on October 30, 2014, the complainant appealed to this Commission, alleging that the respondents violated the Freedom of Information Act (“FOIA”) by failing to comply with the request described in paragraph 2, above.

5. 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 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:

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 1-212.

7. Section 1-211(a), G.S., provides in relevant part:

Any public agency which maintains public records in a computer storage system shall provide, to any person making a request pursuant to the Freedom of Information Act, a copy of any nonexempt data contained in such records, properly identified, on paper, disk, tape or any other electronic storage device or medium requested by the person, including an electronic copy sent to the electronic mail address of the person making such request, if the agency can reasonably make any such copy or have any such copy made. (emphasis added)

8. Section 1-212, G.S., provides in relevant parts:

(a) Any person applying in writing shall receive, promptly upon request, a plain or certified copy of any public record....

(b) The fee for any copy provided in accordance with subsection (a) of section 1-211 shall not exceed the cost thereof to the public agency. In determining such costs for a copy, ... an agency may include only:

...

(2) An amount equal to the cost to the agency of engaging an outside professional electronic copying service to provide such

copying services, if such service is necessary to provide the copying as requested.... (emphasis added)

9. It is found that, to the extent that the respondents maintain the records described in paragraph 2, above, such records are public records and must be disclosed in accordance with §§1-200(5), 1-210(a) and 1-212(a), G.S., unless they are exempt from disclosure.

10. It is found that, by enclosure with a letter dated March 5, 2015, the respondents provided a taser information sheet to the complainant which included certain electronically produced information concerning the identification number and firing time of a specific taser on April 19, 2012. The letter also reaffirmed that the respondents were “unable to make a copy of any radio communication transmissions that occurred on April 19, 2012 due to an issue with the hard drive.”

11. At the hearing, the respondents’ counsel represented that Sgt. Michael Dethlefsen, who had previously been the public information officer for the respondent Police Department, had retired, and that a new record officer had located, the day before the hearing, two additional records within the scope of the complainant’s request. These records are: a) a taser cartridge replacement log, which stated the cartridge identifications numbers for both the cartridge turned in and the new replacement cartridge issued to officer Lovallo on April 19, 2012; and b) a patrol activity report dated April 18 [sic], 2012 by officer Lovallo stating that she was turning in used cartridge T09-2144446 and replacing it with new cartridge T08-1865058. The respondents agreed to mail these two one page records to the complainant immediately following the hearing.

12. Also at the hearing, Lieutenant Stephen Gilmore of the respondent Police Department provided sworn testimony, concerning the radio communications requested as described at paragraph 2.a) above. He testified that an obsolete DVD player acquired in 2003 was not functioning and the respondent Police Department was now using a new device to record and play radio communications that are more recent than April 2012. Lieutenant Gilmore further testified that the Information Technology Department of the respondent City had on three separate occasions purchased DVD drives on Ebay in order to replace the non-functioning DVD player which type is no longer manufactured and sold new. However, none of the three used DVD drives purchased on Ebay allowed access to the radio communications that were apparently recorded on a disc that the respondent Police Department still possesses and produced at the hearing. (Because the broken recording-playback system was older, the respondents explained that it had kept recording without giving any alerts that the playback feature was not functioning. This malfunction was only discovered when there was an attempt to playback earlier recordings.)

13. It is finally found that the respondents did not present any evidence that they explored whether an outside professional electronic copying service could reasonably make a copy of the radio communications described at paragraph 2.a).

14. Lastly, at the hearing, the complainant testified that he had not received a use of force report. However, the hearing officer noted that the use of force report was not part of his October 8, 2014 records request.

15. It is concluded that, based on the efforts of the respondent Police Department detailed at paragraph 12, the respondent Police Department cannot “reasonably make”, pursuant to §1-211(a), G.S., a copy of the radio communications described at paragraph 2.a), and that “engaging an outside professional electronic copying service” would be “necessary to provide the copying as requested”. §1-212(b)(2), G.S.

16. It is also concluded that the respondent Department has produced for the complainant copies of all of the requested records that it maintains and concerning which it can reasonably make a copy. However, because the respondents did not present any evidence that they explored engaging an outside professional electronic copying service, it is further concluded that the respondents failed to prove that they could not reasonably have a copy made of the radio communications described at paragraph 2.a).

17. It is concluded that the respondents violated §§1-210(a) and 1-212(a), G.S., when they failed to provide promptly to the complainant: a) the firing time information concerning the taser, which was provided with the letter of March 5, 2015 (see paragraph 10); and b) the identification number of the taser cartridge that officer Lovallo discharged on April 19, 2012, which was to be provided immediately following the hearing (see paragraph 11).

18. It is concluded that the respondents violated §1-211(a), G.S., when they failed to investigate whether they could reasonably have a copy made of the radio communications described at paragraph 2.a).

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

1. Henceforth, the respondents shall promptly provide non-exempt records when requested.
2. The respondents shall investigate whether an outside professional electronic copying service could reasonably make a copy of the radio communications described at paragraph 2.a). The respondents shall within forty five days of this decision write a letter to the complainant concerning the results of their investigation, specifying copying charges that may be entailed. Pursuant to §1-212(c), G.S., the respondents may require the complainant to prepay any charges in excess of ten dollars, prior to having any copy made.



Clifton A. Leonhardt
as Hearing Officer