

Since 1975



FREEDOM OF INFORMATION



Connecticut Freedom of Information Commission • 18-20 Trinity Street, Suite 100 • Hartford, CT 06106
Toll free (CT only): (866)374-3617 Tel: (860)566-5682 Fax: (860)566-6474 • www.state.ct.us/foi/ • email: foi@po.state.ct.us

Robert Cushman,
Complainant(s)
against

Notice of Meeting

Docket #FIC 2015-115

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

September 16, 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, October 14, 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 October 2, 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 October 2, 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 October 2, 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
Michael W. Mastrianni, Esq.

2015-09-16/FIC# 2015-115/Trans/wrbp/TCB//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 2015-115

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

Respondents

August 18, 2015

The above-captioned matter was scheduled to be heard as a contested case on July 23, 2015, at which time the complainant and the respondents appeared.

For purposes of hearing, the above-captioned matter was consolidated with Docket #FIC 2015-096; Robert Cushman v. Chief, Police Department, Town of Plainville; Police Department, Town of Plainville; and Town of Plainville.

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 January 22, 2015, the complainant made a request to the respondents for a copy of any and all records regarding a Geoffrey E. Carlson and his arrest on January 10, 2015 created by certain specifically identified personnel of the respondent department. The complainant also requested records related to certain officers' training and use of the Alcotest 9510 (which is a breathalyzer machine), and "each and every test and external standard performed" on that machine between December 1, 2014 and January 16, 2015. The complainant also requested a copy of the respondent department's administrative and organizational manuals, files, or folders on certain equipment and department/police procedures.
3. By letter dated February 4, 2015 and received on February 17, 2015, the complainant appealed to this Commission alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his records request.

4. 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.

5. 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, (2) copy such records in accordance with subsection (g) of section 1-212, or (3) receive a copy of such records in accordance with section 1-212.

6. 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."

7. It is concluded that, to the extent that the respondents maintain the requested records, such records are public records within the meaning of §1-200(5), 1-210(a), and 1-212(a), G.S.

8. At the hearing on this matter, the complainant contended that the respondents were not prompt in complying with his request and that he needed the records for a court proceeding in which he was representing a client. The complainant contended that because he did not have the records he requested, the proceeding was continued and he was forced to serve a subpoena on the respondents in order to obtain some of the requested records. The complainant further contended at the hearing that, in light of the respondents' delay in complying with his request, the respondents should be found in violation of the FOI Act and required to provide the balance of the records responsive to his request free of charge.

9. The Commission has previously opined that the word "promptly" in §1-210, G.S., means "quickly and without undue delay, taking into account all of the factors presented by a particular request . . . [including] the volume of records requested; the amount of personnel time necessary to comply with the request; the time by which the requester needs the information contained in the record; 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 loss of the personnel time involved in complying with the request." See FOI Commission Advisory Opinion #51 (Jan. 11, 1982). The Commission also recommended in Advisory Opinion #51 that, if immediate compliance is not possible, the agency should explain the circumstances to the requester.

10. It is found that the complainant's January 22, 2015 request is repetitive, difficult to understand, extremely broad and voluminous. It is also found that the complainant's letter of request does not indicate the time by which he needed the information contained in the requested records.

11. It is also found that the respondents were working to comply with a very similar records request made by the complainant and it is found that the respondent chief initially thought the complainant's January 22, 2015 request was simply a copy of the same request and was sent again inadvertently.

12. It is found that the respondent chief contacted the complainant's office, as early as February 3, 2015, to have the January 22, 2015 request clarified, and to learn which records he should compile and provide to the complainant first, because he estimated that it would take weeks to comply with the entire request given its breadth and the volume of records that would be compiled. In this regard, it is found that the respondent chief worked regularly with the complainant's paralegal to provide records on a rolling basis.

13. It is found that the respondents reviewed the responsive records for any applicable exemptions which took time, again, because of the volume of records that were compiled.

14. It is found that, as of the date of the hearing in this matter, the complainant was provided with some of the records responsive to his request pursuant, in part, to the subpoena he issued and, in part, to the arrangements made between the chief and the complainant's paralegal.


15. It is found that a copies of the remainder of the records responsive to the complainant's request have been compiled and are available to the complainant provided he pays the three hundred dollar fee for them. It is also found that the records have been available to the complainant since March 26, 2015.

16. Weighing all the factors related to the request, it is found that the respondents did not unduly delay complying with the complainant's request in this case.

17. It is concluded, therefore, that the respondents did not violate the promptness provisions of §§1-210(a) and 1-212(a), G.S., as alleged by the complainant.

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

1. The complaint is hereby dismissed.



Attorney Tracie C. Brown
as Hearing Officer