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FREEDOM OF INFORMATION



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

Notice of Meeting

Docket #FIC 2015-786

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

Respondent(s)

July 1, 2016

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, July 27, 2016**. 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 July 15, 2016**. 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 July 15, 2016**. **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 July 15, 2016**, 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: Attorney L. Kay Wilson
Assistant Attorney General Terrence M. O'Neill
Assistant Attorney General Steven M. Barry

FIC# 2015-786/Trans/wrbp/VRP//CAL/2016-07-01

FREEDOM OF INFORMATION COMMISSION
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

Wolfgang Halbig,

Complainant

against

Docket #FIC 2015-786

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

Respondents

June 28, 2016

The above-captioned matter was heard as a contested case on February 18, 2016, at which time the complainant and the respondents appeared, stipulated to certain facts, and presented testimony, exhibits and argument on the complaint. The respondents submitted for an in camera inspection the records described in paragraph 21, below.

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 November 17, 2015, the complainant appealed to the Commission, alleging that the respondents violated the Freedom of Information ("FOI") Act by failing to comply with his October 26, 2015 request for certain records related to the Newtown Police Department's response to the December 14, 2012 shootings at Sandy Hook Elementary School.
3. It is found that the complainant made an October 26, 2015 request to the respondents for:
 - a. Mobile Video Recorder DVD's dated 12/14/12 for the Newtown Police dash cameras of Sgt. Bahamonde (2 dvd's); Officer Chapman (1 dvd); Officer Seabrook; and Lt. Sinko (2 dvd's). See the attached photocopies of the DVD labels for these dash camera recordings (mobile video recorder) for your reference.

- b. The official police reports and affidavits of Chief Kehoc, Captain Rios, Lt. Sinko, Lt. Robinson and Lt. Vangehele for events of, and their specific actions on, 12/14/12 in Newtown at the Sandy Hook Elementary School.

4. It is found that the respondents, through their Legal Affairs Unit, acknowledged the request on November 2, 2015.

5. It is found that the respondents by letter dated December 9, 2015 advised the complainant that “the publically disclosable State Police investigation into the Sandy Hook shooting” was available online, that some of the records he sought might be found there, that the State Police were not the repository for Newtown Police Department records, and that any records created by the Newtown Police Department should be requested from them. The respondents further advised the complainant that “if” the State Police were in possession of video footage originating from another agency such as the Newtown Police Department, such copies were frequently seized and logged as evidence, and that seized property was not disclosable under the FOI Act, but might be available from the originating agency.

6. It is found that the complainant had already sought the records from the Newtown Police Department, been told that the records were in the custody of the State Police, and had been told to go to the State Police to request them.

7. 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.

8. 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.

9. 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.”

10. It is found that the respondents maintain the requested records, and that the records are public records within the meaning of §§1-200(5) and 1-210(a), G.S.

11. It is found that the records responsive to the portion of the request described in paragraph 3.a, above, for dash camera videos, consist of multiple DVDs from each named Newtown police officer, and one DVD containing all the dash camera videos.

12. The respondents contend that the requested DVD’s are exempt from disclosure because they are seized evidence not subject to the FOI Act.

13. The Commission takes administrative notice of its record and decision in Docket #FIC 2014-461, Wolfgang Halbig v. First Selectman, Town of Newtown et al.

14. In Halbig v. Newtown, the Commission concluded that, at least while in the possession of the Newtown Police Department, the dash camera video from Lieutenant Sinko’s vehicle was a public record within the meaning of §§1-200(5), 1-210(a) and 1-212(a), G.S.

15. The Commission also found in Halbig v. Newtown that Lieutenant Sinko’s dash camera video had been promptly provided to the complainant by Newtown. (The complainant disputes the authenticity or accuracy of that copy, and seeks to compare it with the copy he has requested in this case.)

16. The Commission also takes administrative notice of its record and decision in Docket #FIC 2014-372, Dave Altimari et al. v. DESPP et al.

17. In Altimari v. DESPP, the Commission thoroughly addressed the same argument by the respondents as the one that they raise in this case: that records that are seized as evidence are not subject to the FOI Act. The Commission concluded to the contrary, was reversed by the Superior Court, and that decision is currently before the Appellate Court.

18. The Commission notes that, unlike the records in Altimari v. DESPP, which were records seized from the home of the Sandy Hook shooter, the dash camera videos in this case were never private records and, one video, in the hands of the Newtown Police Department, had previously been copied for the complainant.

19. It is concluded that, unless the Commission’s decision in Altimari v. DESPP is ultimately reversed, that decision controls the outcome in this case.

20. It is therefore concluded the requested dash camera videos are not exempt from disclosure, and the respondents violated the FOI Act by withholding them.

21. With regard to the records described in paragraph 3.b, above, it is found that the responsive records consist of three written and signed statements made by three Newtown police officers to the State Police, submitted to the Commission for an in camera inspection.

22. The respondents contend that those statements are exempt from disclosure pursuant to §1-210(b)(3)(C), G.S., as signed statements of witnesses.

23. Section 1-210(b)(3), G.S., provides in relevant part that disclosure is not required of:

Records of law enforcement agencies not otherwise available to the public which records were compiled in connection with the detection or investigation of crime, if the disclosure of said records would not be in the public interest because it would result in the disclosure of (A) the identity of informants not otherwise known or the identity of witnesses not otherwise known whose safety would be endangered or who would be subject to threat or intimidation if their identity was made known, (B) the identity of minor witnesses, (C) signed statements of witnesses

24. The Commission believes that §1-210(b)(3)(C), G.S., which was enacted concurrently with §1-210(b)(3)(A), is intended to protect civilian witnesses, not police officer witnesses.

25. However, the Commission takes administrative notice of the fact that police officers frequently are witnesses to crimes, and the legislature is presumed to have knowledge of that fact. Had the legislature wished to exclude police officers from the confidentiality provisions of §1-210(b)(3)(C), G.S., it could have done so.

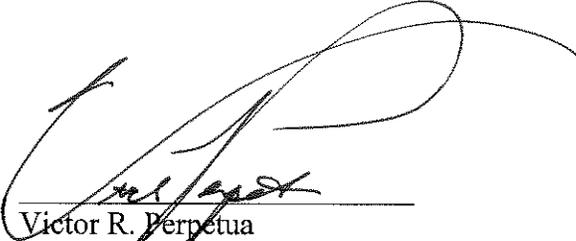
26. It is therefore concluded that the plain language of §1-210(b)(3)(C), G.S., permits the respondents to withhold the signed statements of the Newtown police officers that were interviewed by the state police.

27. It is therefore concluded that the respondents did not violate the FOI Act by withholding the records described in paragraph 21, above.

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

1. The respondents shall forthwith provide the complainant with copies of the dash camera videos described in paragraph 11, above.

2. Enforcement of paragraph 1 of the order is stayed until resolution of the appeal from the decision in Commissioner, DESPP et al.v. FOIC et al., Docket No. CV-15-6029797-S, Superior Court, Judicial District of New Britain, Memorandum of Decision dated April 8, 2016 (Schuman, J.).



Victor R. Perpetua
As Hearing Officer

FIC2015-786/HOR/VRP/06272016