DOCKET NO. HHB-CV-16-5017450-S	:	SUPERIOR COURT
JAMES TORLAI	:	JUDICIAL DISTRICT OF NEW BRITAIN
VS.	:	
FREEDOM OF INFORMATION COMMISSION AND COMMISSIONER, STATE OF CONNECTICUT DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION	:	SEPTEMBER 11, 2017

MEMORANDUM OF DECISION

The plaintiff, James Torlai, appeals from the decision of the Freedom of Information Commission (commission) concerning the plaintiff's complaint against the defendant Department of Emergency Services and Public Protection (department) regarding its response to the plaintiff's request for certain arrest records. For the reasons stated below, the court affirms the decision of the commission and dismisses the plaintiff's appeal.

I

FACTS AND PROCEDURAL HISTORY

On March 7, 2014, the plaintiff sent a letter to the department, pursuant to the Freedom of Information Act (FOIA), General Statutes §§ 1-200 et seq., requesting copies of "all records" related to an arrest identified as CFS 12-00015918. The plaintiff's March 7, 2014 letter specified that his request included, but was not limited to, "all reports related to the

Sent on 9/11/17 by A. Jordanopoulos to:
1) Mr. James Torlai
2) Atty Paula S. Pearlman - FOIC
3) AAG J.W. Coley
4) Reporter of Judicial Decisions

arrest, all video, audio or other recordings related to the arrest, all test results related to the DUI charge, and all records prepared for the Department of Motor Vehicles." Record (R.), p. 3. At the time of his request, the plaintiff had other requests for records pending with the department, as well other complaints against the department pending before the commission. The plaintiff's prior requests included two previous requests for some of the same records at issue in this appeal, which the plaintiff had made on July 13, 2013 (R., p136), and November 17, 2013. R., p. 139.

The department acknowledged the plaintiff's March 7, 2014 request by letter dated March 10, 2014, assigning it the department file number 14-223. R., p. 5. At a commission hearing on June 16, 2014, on one of the plaintiff's prior requests for records of the same arrest, the department provided the plaintiff with the investigative report, partially redacted, and a DVD of a video recording of the arrest. The department believed that it had fully complied with both the earlier request that was the subject of the June 16, 2014 hearing and the March 7, 2014 request number 14-223 when it provided the report and video to the plaintiff on June 16, 2014. R., p. 195.

Five months later, by letter dated November 30, 2014, the plaintiff informed the department that it had not given him all the records responsive to his March 7, 2014 request. He requested unredacted copies of the records and informed the department that some of the records were "copied sideways," cutting off some text on the right margin. R., p. 154. On

April 7, 2015, the plaintiff renewed his March 7, 2014 request and asked the department to inform him if more records were coming. R., p. 156.

By letter dated April 20, 2015, and filed on April 22, 2015, the plaintiff complained to the commission, alleging that the department had violated the act by failing to comply with his April 7, 2015 request to respond more fully to his March 7, 2014 request. R., p. 1. He alleged that the department had improperly redacted certain information and had failed to provide all of the records responsive to his request. The commission assigned the complaint a docket number of #FIC 2015-292. R., p. 18.

Between July 31, 2015, and September 2, 2015, the department continued to communicate with the plaintiff and made efforts to comply with his request. R., pp. 226-27, 229. Before the first hearing in this matter, the department gave the plaintiff a new copy of the report with the text fully copied. R., pp. 49, 229. At the first hearing, held on September 2, 2015, the department gave the plaintiff the arrest stamp. R., pp. 194, 256.

At that first hearing, the plaintiff claimed that he had not received the following records related to CFS 12-0015918: the computer-assisted dispatch (CAD) notes; the DWI log book entry; the chain of custody related to the video recording; and the license revocation form. R., pp. 225-26, 229. He claimed that the video he had received was distorted. R., 227. He claimed that the department had not explained the redactions in the documents and had not been prompt in responding to his request. R., p. 241.

The department presented evidence at the first hearing that it had provided the chain of custody information and the license revocation form to the plaintiff on June 16, 2004, at the hearing on a prior complaint. R., pp. 187-88, 208, 274-75.

The department also presented evidence that the original video had been made on VHS tape by a camera mounted on the dashboard of the arresting officer's vehicle; that the quality of the original was poor; that the original had been digitized and copied to a DVD that had been provided to the plaintiff; and that the plaintiff had been offered an opportunity to view the original VHS tape at the department's offices. R., pp. 180-85, 241-50.

As to the redactions, the department explained that the original charge and the "offense/incident type" had been redacted from the copies provided to the plaintiff because the arrestee had not been convicted of the original charge, but of a lesser charge. R., pp. 268-69. The department believed that because there was never a conviction on the original criminal charge, disclosure of that charge was barred by General Statutes § 54-142a, the erasure statute. R., pp. 267-71. The department also presented evidence that the arrestee's driver's license number and telephone numbers of the arrestee and others had been redacted because the information was exempt under General Statutes § 1-210 (b) (2). R., pp. 269-71.

After the first hearing was closed, the hearing officer reopened the hearing to clarify certain claims. At the second hearing on October 27, 2015, the department explained that it had not understood the plaintiff's original request to include the CAD notes. It was also

unaware that the log book entry it had previously provided to the plaintiff was not the log book entry he wanted until he explained his request with more particularity at the first hearing. R., pp. 307-08. The department gave the plaintiff the CAD notes and the additional log book entry at the second hearing.

At the second hearing, the department also presented testimony that the telephone numbers that were redacted had been obtained from the Department of Motor Vehicles (motor vehicle department) through the Connecticut On-Line Law Enforcement Communications Teleprocessing (COLLECT) system. R., pp. 309-13. The department asserted that the telephone numbers were "personal information" pursuant to General Statutes § 14-10 (a) (3) and that it was precluded from redisclosing that information except as permitted by General Statutes § 14-10 (f). The plaintiff objected that the witness who was testifying was not a state trooper and could not testify credibly that the arresting officer actually obtained the information through COLLECT rather than by questioning the arrestee and other individuals. R., pp. 311-13.

The hearing officer issued a proposed final decision on December 8, 2015, finding, with respect to the redaction of the original criminal charge, that the department had not presented sufficient evidence to show that the original charge was dismissed or nolled. R., p. 318. The department moved to reopen the hearing to present additional evidence on that issue. The hearing officer granted the motion and held a third hearing on January 26, 2016.

R., pp. 361, 384. The department presented additional evidence from which it argued that the commission could infer that the original charge was dismissed or nolled when a lesser charge of an infraction was substituted. R., pp. 387-406. During the discussion, however, the department's counsel realized that the department had inadvertently disclosed a document that noted the original charge of a violation of General Statutes § 14-227a. The department then withdrew its claim regarding the erasure statute as moot in light of the inadvertent disclosure and offered to provide the plaintiff with a new copy of the records with the original charge unredacted. R., pp. 406-08.

Near the end of the third hearing, the plaintiff suddenly asserted that he had not been provided a subpoena that was mentioned in the CAD notes. The hearing officer indicated that the evidence was closed and that the plaintiff could raise his objection with the commission. The plaintiff then stated, "No, I'll, I'll request it again." R., pp. 425-26.

On February 12, 2016, the plaintiff moved to reopen the hearing to introduce additional evidence relevant to the erasure statute issue. R., p. 446. The hearing officer denied that motion on February 26, 2016. R., p. 472.

The hearing officer issued a proposed final decision on April 4, 2016. In that decision, the hearing officer found that the department did not violate FOIA's promptness requirements. She made extensive and detailed factual findings concerning the circumstances relevant to the promptness issue. R., pp. 488-90. With respect to the initial redaction of the original criminal

charge, the hearing officer found that the department's assertion of erasure under General Statutes §§ 54-142a and 54-142c (a) was made in good faith and did not violate FOIA's promptness provisions. Because the department withdrew the § 54-142 claim after discovering that the information had been inadvertently disclosed, the hearing officer did not make a finding regarding the applicability of § 54-142a to a charge that is reduced. She did find, however, that the failure to provide the report with the charge unredacted violated General Statutes §§ 1-210 (a) and 1-212 (a). R., p. 488.

The hearing officer further found that the department had properly redacted the operator license number, telephone numbers, and social security numbers from the records provided to the plaintiff. She found that the department had obtained that information from the motor vehicle department; that the information was "personal information" pursuant to General Statutes § 14-10 (a) (3) and could not be redisclosed to the plaintiff under General Statutes § 14-10 (g). R., pp. 487-88.

The hearing officer proposed that the commission issue orders requiring the department (1) to provide the complainant a copy of the records without the charge and incident type redacted, and (2) to strictly comply with the disclosure provisions of General Statutes §§ 1-210 (a) and 1-212 (a) henceforth. R., p. 490.

The plaintiff objected to the proposed decision on several grounds. He claimed that the hearing officer should have addressed the claim that the erasure statute required erasure of

an original criminal charge when the person is convicted of an infraction, even though the department withdrew that claim in the final hearing. He claimed that he still had not obtained an audio recording of the initial telephone call reporting the incident and a copy of the subpoena mentioned in the CAD notes. He objected to the finding that the telephone numbers were provided by the motor vehicle department and argued that, even if they were, they should have been redisclosed by the department because compliance with FOIA is reasonably related to the purposes of the department pursuant to General Statutes § 14-10 (g). R., pp. 491-98.

At its meeting of April 13, 2016, the commission heard argument from the plaintiff and discussed the proposed final decision. After such discussion, the commission unanimously approved the proposed final decision. R., pp. 499-509. The final decision was issued on April 15, 2016. R., pp. 511-19. This appeal followed.

II

SCOPE OF REVIEW

This appeal is brought and must be reviewed pursuant to the Uniform Administrative Procedure Act (UAPA), General Statutes §§ 4-166 et seq. Judicial review of an agency decision under the UAPA is "very restricted." *MacDermid, Inc.* v. *Dept. of Environmental Protection*, 257 Conn. 128, 136, 778 A.2d 7 (2001). The scope of judicial review under the UAPA is stated in General Statutes § 4-183 (j), which provides in relevant part: "The court

shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court shall affirm the decision of the agency unless the court finds that substantial rights of the person appealing have been prejudiced because the administrative findings, inferences, conclusions, or decisions are: (1) In violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by other error of law; (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. If the court finds such prejudice, it shall sustain the appeal and, if appropriate, may render a judgment under subsection (k) of this section or remand the case for further proceedings."

"[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or question of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) *Prendergast* v. *Commissioner of Motor Vehicles,* 172 Conn. App. 545, 550, 160 A.3d 1087 (2017).

"The substantial evidence rule governs judicial review of administrative fact-finding under the [act]. [See] General Statutes § 4-183 (j) (5) and (6). An administrative finding is supported by substantial evidence if the record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . The substantial evidence rule imposes an important limitation on the power of the courts to overturn a decision of an administrative agency." (Internal quotation marks omitted.) *Prendergast* v. *Commissioner of Motor Vehicles,* supra, 172 Conn. App. 550. "It is fundamental that a plaintiff has the burden of proving that the [agency], on the facts before [it], acted contrary to law or in abuse of [its] discretion . . . ." (Internal quotation marks omitted.) *Murphy* v. *Commissioner of Motor Vehicles*, 254 Conn. 333, 343, 757 A.2d 561 (2000).

In addition, "[c]onclusions of law reached by the administrative agency must stand if the court determines that they resulted from a correct application of the law to the facts found and could reasonably and logically follow from such facts. . . . [Similarly], this court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes." (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, 310 Conn. 276, 281, 77 A.3d 121 (2013).

"On the other hand, it is the function of the courts to expound and apply governing principles of law." *State Medical Society* v. *Board of Examiners in Podiatry*, 208 Conn. 709,

717, 546 A.2d 830 (1988). "[W]hen a state agency's determination of a question of law has not previously been subjected to judicial scrutiny . . . the agency is not entitled to special deference. " (Internal quotation marks omitted.) *Chairperson, Connecticut Medical Examining Board* v. *Freedom of Information Commission*, supra, 310 Conn. 276, 281. "If, however, a governmental agency's 'time-tested' interpretation of a statute is reasonable, that interpretation should be accorded great weight by the courts." (Internal quotation marks omitted.) *Office of Consumer Counsel* v. *Dept. of Public Utility Control*, 252 Conn. 115, 121, 742 A.2d 1257 (2000).

III

DISCUSSION

A

The plaintiff first claims that the commission erred in finding that the department did not violate FOIA's promptness requirements by initially redacting the original criminal charge. The plaintiff argues that the commission had previously found that the records of this arrest were not subject to the erasure statute and that the department therefore acted in bad faith in redacting the criminal charge until January 26, 2016, when it provided the plaintiff with unredacted copies of the relevant documents.

In this argument, the plaintiff relies on the history of a prior request and subsequent complaint to the commission. Before the plaintiff's March 7, 2014 request that gave rise to

this appeal, the plaintiff had previously requested records related to the same arrest at issue in this appeal on July 3, 2013 (R., p. 136) and on November 17, 2013 (R., p. 139). The department initially stated that it had no documents related to the request. The plaintiff complained to the commission, which docketed the complaint as #FIC 2013-713 and scheduled a hearing for June 16, 2014. Before that hearing, an attorney assigned to represent the department in the matter reviewed the file and determined that the records were not erased pursuant to General Statutes § 54-142a because the arrestee had ultimately been convicted of an infraction. At the June 16, 2014 hearing in #FIC 2013-713, the department provided what it believed to be the records at issue in the plaintiff's request, redacting the original criminal charge because the arrestee had not been convicted of a crime but of an infraction.

In its final decision in #FIC 2013-713,[1] the commission commented that the department had initially believed the records were erased but had subsequently realized they were not erased because of the conviction on a lesser charge. Although the commission found that the department's legal mistake was not intentional, it also found that the mistake related to an area of law in which the department was expected to be accurate, and it therefore

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[1] The commission's decision in #FIC 2013-713, issued on August 13, 2014, was not made part of the record in this case. The decision is available, however, on the commission's website at http://www.ct.gov/foi/cwp/view.asp?a=4162&Q=551396&pp=12&n=1 (last visited September 9, 2017). Because some of the plaintiff's claims in this appeal are based on the disposition of that earlier appeal, and because the department has discussed the decision in its brief, the court discusses it here.

found that the department had unintentionally violated FOIA's promptness provision. It found that the department had subsequently provided the requested documents to the plaintiff. The commission's decision in #FIC 2013-713 did not discuss the redactions in the documents provided to the plaintiff. Its order merely stated that the department should "strictly comply with the promptness provisions of § § 1-210 (a) and 1-212 (a), G.S." *Torlai* v. *Commissioner, State of Connecticut Department of Emergency Services and Public Protection*, Freedom of Information Commission Final Decision #FIC 2013-713 (August 13, 2014), http://www.ct.gov/foi/cwp/view.asp?a=4162&Q=551396&pp=12&n=1 (last visited September 9, 2017).

In the commission proceeding in this case (#FIC 2015-292), the plaintiff claimed that the department's redaction of the original charge was in willful disobedience of the commission's order in #FIC 2013-713. The commission disagreed. In #FIC 2013-713, the department's staff originally believed that *all* records of the arrest at issue were erased, but its legal counsel subsequently advised it that the conviction on a lesser charge made the records generally disclosable. In this case, which concerns the exact same records provided in response to #FIC 2013-713, the department's concern about the erasure statute was different. The arrestee was not convicted of a criminal charge but was convicted of an infraction. The department viewed the change in the charge, which required judicial approval, as the equivalent of a dismissal of the criminal charge. It therefore disclosed the records that were

related to the ultimate infraction conviction, but redacted the original criminal charge, believing it to have been erased.

Although the plaintiff disputed that the erasure statute allows "partial erasure," the hearing officer acknowledged that the department's argument was not frivolous. See, e.g., R., pp. 404-06. In the proposed final decision, the hearing officer found that the department "initially had a good faith belief that the original charge was subject to the erasure provisions of §§ 54-142a and 54-142c (a), G.S., and, therefore, did not deliberately delay disclosing the requested records without the aforementioned redactions as the complainant contends." R., p. 519. The commission agreed. The court agrees with the commission.

General Statutes § 54-142a (a) requires the erasure of all police, court, and prosecutorial records after an arrestee is found not guilty of a criminal charge or the charge is dismissed. Section 54-142a (c) requires the erasure of all police, court, and prosecutorial records when a case is nolled and thirteen months have elapsed. The department is charged with interpreting and applying the erasure statutes when it receives a request for arrest records. General Statutes § 54-142c (a).

The erasure statute applies expressly to "criminal" cases. See General Statutes § 54-142a. The "fundamental purpose of the records erasure and destruction scheme embodied in § 54-142a is to erect a protective shield of presumptive privacy for one whose criminal charges have been dismissed." *State* v. *Anonymous*, 237 Conn. 501, 516, 680 A.2d 956

(1996). The erasure statute is silent with respect to the status of a single-count criminal charge that is reduced to an infraction. As a result of the substitution of an infraction, the arrestee is not convicted of a criminal charge, and, as the department's attorney reported, a law enforcement criminal history check returns no records of convictions for infractions. R., pp. 387-88, 390.

Because the department withdrew its claim under the erasure statute when it discovered that it had inadvertently disclosed the original criminal charge, neither the commission nor the court needs to decide, in this case, whether the department correctly construed the erasure statute with respect to a criminal charge that is reduced to an infraction. The question, however, is sufficiently complex that the department was warranted in exercising caution and asserting the applicability of the erasure statute in the first instance.[2] The commission did not abuse its discretion, or act arbitrarily or capriciously, in concluding that the department did not unduly delay disclosing the records by asserting its good-faith belief that the arrestee was entitled to redaction of a criminal charge of which he was not convicted.

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[2] In his reply brief, the plaintiff argues that the department violated the erasure statute by inadvertently disclosing the original criminal charge. The plaintiff has no standing to raise such a claim, which, in any event, runs counter to the arguments he made to the commission. The court accordingly does not consider this argument.

B

The plaintiff next claims that the commission erred in failing to order the department to produce a subpoena mentioned in the CAD notes that were provided to him on October 27, 2015. The plaintiff did not raise this issue when he received the CAD notes or at any time before the third hearing on January 27, 2016. At that third hearing, he brought up the issue of the subpoena after the evidence was closed. When the hearing officer indicated that it was too late to raise a new issue, the plaintiff said, "I'll request it again." R., p. 426. The hearing officer reasonably construed the plaintiff's statement as a withdrawal of any claim regarding a subpoena for the purposes of #FIC2015-292, the proceeding at issue here.[3]

The plaintiff subsequently moved to reopen the hearing for further evidence on the erasure statute but did not mention the subpoena in his motion to reopen. The hearing officer could have reasonably concluded, from his failure to raise any issue regarding a subpoena in his motion to reopen, that he was not pressing the claim. She did not address the subpoena in her proposed final decision. Although the plaintiff made a cursory reference to a subpoena in his "partial brief" to the commission (R., pp. 491-98) and at oral argument at the commission's meeting (R., pp. 503-04), the commission could reasonably conclude that his failure to mention the subpoena before the last minutes of the third hearing, and his failure to

[3] As the record in this appeal demonstrates, it was not uncommon for this plaintiff to issue new requests for records related to previous requests, including previous requests that had already been appealed to the commission.

include any mention of the subpoena in his subsequent motion to reopen, constituted an abandonment of the claim for the purposes of this proceeding. Since the issue of the subpoena was not timely addressed by the plaintiff when the hearing was reopened for evidence on January 25, 2016, and since he did not move to reopen the evidence to consider it, the commission did not err in declining to address it. See *Dragan* v. *Connecticut Medical Examining Board*, 223 Conn. 618, 633-34, 613 A.2d 739 (1992) (failure to assert claim before administrative board "promptly and adequately" constituted waiver of claim).

C

In three sections of his brief, the plaintiff challenges the commission's finding that the department did not violate FOIA when it redacted three telephone numbers from the records it provided. At the first hearing in this matter, the department claimed the telephone numbers were exempt under the "invasion of personal privacy" provision of General Statutes § 1-210 (b) (2). In the second hearing, however, a paralegal from the department's legal unit testified that the department obtains telephone numbers from the motor vehicle department through the COLLECT system and that disclosure of personal information obtained from the motor vehicle department was restricted by General Statutes § 14-10 (f) and (g). The commission agreed with the department's claim under § 14-10 and did not address its earlier claim of exemption under § 1-210 (b) (2).

In challenging the commissioner's decision on this issue, the plaintiff claims that the

commission did not address the department's claim under General Statutes § 1-210 (b) (2). The department, however, was entitled to present additional statutory grounds for its redaction of telephone numbers. When the commission determined that one of the grounds asserted for the redaction was proper, it did not need to decide the department's earlier arguments under other statutes.

The plaintiff next claims that the commission misconstrued General Statutes § 14-10. The court concludes that the commission's interpretation of § 14-10 is consistent with its plain language. General Statutes § 14-10 (a) (3) defines "personal information" in relevant part as "information that identifies an individual and includes an individual's . . . telephone number . . . ." General Statutes § 14-10 (d) allows the motor vehicle department to disclose personal information from a motor vehicle record "only if such disclosure is authorized under subsection (f)" of § 14-10. Subsection (f) (1) authorizes the disclosure of personal information from a motor vehicle record to "[a]ny federal, state or local government agency in carrying out its functions or to any individual or entity acting on behalf of any such agency . . . ." Subsection (g) of § 14-10 provides that a person who has received personal information pursuant to subsection (f) may not "resell or redisclose the information for any purpose that is not set forth in subsection (f) of this section, or reasonably related to any such purpose." Subsection (k) of § 14-10 makes it a class A misdemeanor to disclose personal information obtained from the motor vehicle department for any purpose not authorized by

the provisions of § 14-10. A person convicted of a class A misdemeanor may be imprisoned for up to one year. General Statutes § 53a-26 (d) (1).

The prohibition on resale or redisclosure of personal information obtained from the department of motor vehicles was added to General Statutes § 14-10 (g) by amendment in Public Acts 2008, No. 08-150, § 3. Subsection (k), imposing a criminal penalty for unauthorized disclosure of personal information obtained from a motor vehicle record, was added in the same public act. See R., pp. 346-47. The parties have not cited, and the court has not found, any cases discussing the meaning of the redisclosure prohibition enacted in 2008.[4] The plaintiff argues that disclosures of public records under FOIA is "reasonably related" to the official function of any governmental agency. The commission, however,

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[4] In *Davis* v. *Freedom of Information Commission*, 47 Conn. Supp. 309, 315-16, 790 A.2d 1188 (2001), aff'd per curiam, 259 Conn. 45, 787 A.2d 530 (2002), the court held that the restrictions on disclosure of personal information in General Statutes § 14-10 applied only to employees of the motor vehicle department and did not bar assessors from making personal information obtained from the motor vehicle department public as part of the assessors' duty to make grand lists public. The court reasoned that the *absence* of a prohibition on redisclosure in § 14-10 (g) indicated that persons receiving personal information from the motor vehicle department were not bound to comply with the restrictions in § 14-10 (f). *Davis* was decided, however, before the legislature amended § 14-10 (g) expressly to include a prohibition on redisclosure for any purpose not authorized by § 14-10 (f). The reasoning in *Davis* about the absence of a prohibition on redisclosure is no longer valid in light of Public Acts 2008, No. 08-150, § 3, which imposed both a prohibition on unauthorized redisclosure and a criminal penalty for unauthorized disclosure. See also *Commissioner of Public Safety* v. *Freedom of Information Commission*, 301 Conn. 323, 333-41, 21 A.3d 737 (2011) (distinguishing *Davis* on other grounds and holding that assessors were prohibited from disclosing residential addresses of certain public officials and employees in the motor vehicle grand lists pursuant to General Statutes § 1-217.).

reasonably concluded that § 14-10 (g) requires that any redisclosure be for a purpose authorized under § 14-10 (f), which does not include disclosures to the general public merely upon request. General Statutes § 14-10 (f) is intended to restrict the disclosure of personal information collected by the motor vehicle department to certain defined purposes. The prohibition on *redisclosure* was added to § 14-10 (g) to ensure that the restrictions of § 14-10 (f) continue to apply to anyone who receives information under that subsection. The department's construction of the restrictions in § 14-10 (f) and (g) was reasonable and does not conflict with any authority cited by the plaintiff.

The plaintiff next claims that the evidence was insufficient to support the commission's finding that the arresting officer obtained the telephone numbers from the motor vehicle department through the COLLECT system. The court disagrees. The department's witness clearly testified that the state police obtain this information through the COLLECT system. R., pp. 310-13. This testimony, if credited by the hearing officer, was substantial evidence of the source of the information. The hearing officer did credit the testimony and based her factual finding on it. "In determining whether an administrative finding is supported by substantial evidence, the reviewing court must defer to the agency's assessment of the credibility of witnesses. . . . The reviewing court must take into account contradictory evidence in the record . . . but the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from

being supported by substantial evidence." (Internal quotation marks omitted.) *Frank* v. *Dept. of Children & Families*, 312 Conn. 393, 411-12, 94 A.3d 588 (2014). In this case, the court has considered the plaintiff's claim that the CAD notes contradict the witness's testimony that the telephone numbers were obtained from the department of motor vehicles. Even if the CAD notes were seen to be inconsistent with the witness's testimony, it was the province of the hearing officer to determine which evidence to credit and what weight to give to different items of evidence. The commission did not err in accepting the hearing officer's finding regarding the source of the telephone numbers.

Finally, the plaintiff argues that the witness lacked personal knowledge of the source of the telephone numbers. The fact that the witness's testimony was based on information received from others does not compel the court to reject the commission's finding. "[A]dministrative tribunals are not strictly bound by the rules of evidence and . . . they may consider evidence which would normally be incompetent in a judicial proceeding, as long as the evidence is reliable and probative." (Internal quotation marks omitted.) *Jutkowitz* v. *Dept. of Health Services*, 220 Conn. 86, 108, 596 A.2d 374 (1991). There is no prohibition against hearsay evidence in the UAPA. Id. The court concludes that the record provides substantial evidence for the commission's finding.

D

The plaintiff next claims that the department violated FOIA's promptness provision

by failing to respond to his November 30, 2014 letter, in which he informed the department that the report it had provided him on June 15, 2014 was "copied sideways" and missing some text on the right margin. The plaintiff contends that he did not receive a full copy of the police report until August 3, 2015.

The commission and the department argue that the commission properly determined that the department's response was reasonably prompt under the circumstances. The court agrees with the defendants.

The word "promptly" appears in two sections of FOIA related to the production of records. General Statutes § 1-210 (a) (1) provides in relevant part: "Except as otherwise provided by any federal law or state statute, all records maintained or kept on file by any public agency . . . shall be public records and every person shall have the right to . . . inspect such records promptly during regular office or business hours . . . ." In a similar vein, General Statutes § 1-212 (a) 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."

Since at least 1982, the commission has construed the word "promptly" to mean "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 requestor needs the

information contained in the records; 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 the loss of the personnel time involved in complying with the request." Freedom of Information Commission Advisory Opinion #51 (January 11, 1982).[5] The commission's construction of the word "promptly" is consistent with the dictionary definition for "prompt," which is "being ready and quick to act as the occasion demands." Merriam-Webster's Collegiate Dictionary (11th Ed. 2012), p. 994. The commission reasonably takes into account the demands of the occasion, including available personnel resources, competing demands on those resources, and the urgency of the various demands on the time of agency personnel. Moreover, the commission's construction of "promptly" has been subjected to judicial review and has been found to be a reasonable construction of the statutory requirement in at least two Superior Court decisions. See *Smith* v. *Freedom of Information Commission*, Superior Court, judicial district of New Britain, No. CV 12-5015684-S, 2013 WL 3316216, *3 (June 7, 2013, *Cohn, J.*), and *Torlai* v. *Freedom of Information Commission*, Superior Court, judicial district of New Britain, No. CV 15-5016760-S, 2016 WL 4150549 (June 27, 2016, *Schuman, J.*) (*Torlai I*).

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[5] Advisory Opinion #51 is available on the commission's website at http://www.state.ct.us/foi/Advisory_Opinions_&_Dec/AO_51.htm (last visited Septemer 9, 2017).

In this case, the commission found that the legal services unit of the department is responsible for complying with FOIA requests. It found that the unit, which consists of seven individuals when fully staffed, must provide legal support to the entire department, which includes approximately 1,700 managers and employees in numerous locations around the state, as well as to the office of the Attorney General and private counsel handling legal matters for the department. R., p. 518.

The commission's finding is supported by the departments's Exhibit 7 (R., p. 209), which set forth the responsibilities of the department's legal services unit, and by the testimony of a paralegal who works in the legal services unit. R., pp. 259-62. The unit's responsibilities include not only responding to records requests from the public, but assisting agency staff with responding to subpoenas and discovery requests, advising on matters relating to service of process, appearing as witnesses in commission hearings and participating in other administrative proceedings, drafting agency regulations, performing fact finding in all Commission on Human Rights and Opportunities complaints, reviewing contracts and agreements with other agencies, providing guidance on state ethics issues to agency personnel, and numerous other tasks. This work is done by one department head, three staff attorneys, two paralegals, and an administrative assistant, with occasional help from a small and varying number of personnel in temporary assignments. Before records can be released to the public, they must be reviewed by legal staff because numerous statutes

restrict the release of certain records, including but not limited to erased records, the names of victims of sexual assaults, the names of juvenile offenders, and various records associated with firearms and the persons who possess them. The agency handles more than a thousand FOIA requests each year and releases some 45,000 to 50,000 reports each year. R., p. 209.

The commission also found that the legal affairs unit has to rely on other units or divisions to search for and forward responsive records to it. It also found that those other units receive requests related to other matters, such as court proceedings, and must prioritize tasks to the extent that they know when the records are needed. These findings are supported by the record, including but not limited to the testimony of a paralegal in the legal services unit (R., pp. 259-61); Exhibit 7 (R., p. 209); and Exhibits 1, 2, and 3. R., pp. 180-193 (documenting attempt to comply with request for copy of dash cam video without distortion).

The commission also found that the plaintiff's own actions contributed to the delay. By making multiple requests for the same materials, including requesting materials that the department had previously provided to him, the complainant created confusion that resulted in delay. The commission also found that the plaintiff's requests were not clear and the department did not understand what he was requesting. The record supports these findings. The plaintiff made at least three separate requests for the same arrest information, with each request worded somewhat differently. R., pp. 3, 136, 139. On November 30, 2014, the plaintiff asked again for records that he had previously been provided on June 16, 2014,

including the chain of custody documents and the video recording of the arrest. R., pp. 154 (November 30, 2014 request), pp. 225-56, 187-93 (chain of custody documents), and 232-35, 246-48 (video recording).

This case is very similar to an administrative appeal brought by the same plaintiff against the same defendant regarding similar records in 2015. In affirming the commission's decision in that case, the court observed: "It was thus entirely proper for the commission to weigh all the factors and consider the practical realities of complying with the plaintiff's request. Essentially, the plaintiff lodged a time-consuming, complex request for records with an overburdened and understaffed compliance unit. The plaintiff has never stated a reason why he needed more immediate compliance, which is a valid factor for the commission to consider under its advisory opinion. Further, the plaintiff's brief is noteworthy for the plaintiff's complete lack of acceptance of responsibility for any part of the problem. Complying with the plaintiff's current request was in itself a large undertaking. But the plaintiff filed an astonishing 42 other records requests with the department during this two year period [2013-2015] . . . . This sort of deluge cannot help but overwhelm a state agency. The plaintiff cannot expect a state agency to ignore all its other important functions and cater to his own requests, especially when the plaintiff expresses no valid reason for more immediate compliance. Given the difficult circumstances that the plaintiff helped to create, the commission reasonably and correctly determined that the department acted promptly."

Torlai I, supra.

Although the plaintiff's request in this case was for the records of only one arrest, while the request in *Torlai I* sought records of several arrests, the court's observations in *Torlai I* apply equally in this case. The plaintiff modified or expanded his request on multiple occasions, creating confusion, and deluged the department with other competing records requests and appeals to the commission while this request was pending. Given the totality of the circumstances, including the confusion to which the plaintiff contributed, the commission reasonably and properly determined that the department did not violate FOIA's promptness provisions.

E

The plaintiff next claims that a telephone call was received on January 8, 2012 related to the arrest at issue and that the department failed to provide him with an audio recording of the call. The plaintiff does not cite to portions of the record in which he raised this claim before the commission.

The commission notes that the plaintiff filed a motion requesting that the commission issue a subpoena for certain records, including any audio recordings related to the arrest at issue. R., pp. 375-81. That motion was denied. Although the plaintiff mentioned an audio recording in passing in his "partial brief" to the commission, he did not pursue the claim in any of the three evidentiary proceedings before the hearing officer or before the

commission itself.

The record does not contain substantial evidence that the department failed to provide an audio recording to the plaintiff. Although the plaintiff apparently infers that the arresting officer was dispatched to the scene of the arrest as a result of a telephone call, the plaintiff cites no evidence in the record tending to show that a recording of the telephone call existed at the time of his request. Nor does he cite any portion of the record to show that he pressed this claim before the hearing officer or the commission. His claim is therefore not properly before the court. See *Dragan* v. *Connecticut Medical Examining Board*, supra, 223 Conn. 632-33; see also *Torlai I*, supra.

F

The plaintiff's final claim is that the commission's decision is contradictory with respect to the erasure statute because the commission did not rule on the department's claim that the original charge was subject to erasure because it was reduced to an infraction, but nevertheless found that the department violated General Statutes §§ 1-210 (a) and 1-212 (a) by failing to provide him with a copy of the unredacted record. He asks the court to remand the case to the commission to make a "legal finding" as to whether the erasure statute allows "partial erasure" or, alternatively, to decide the issue and rule that partial erasure is precluded.

The final decision is not contradictory. The commission found that the department initially asserted, in good faith, a claim that the criminal charge should be redacted because it

had been dismissed by operation of law when the infraction was substituted. At the final hearing, however, the department's counsel realized that the original charge had not been redacted from one of the documents provided to the plaintiff and that the legal issue was therefore moot. He then withdrew the legal claim and represented that he would provide the plaintiff with an unredacted copy of the records promptly, which he did.[6] The hearing officer found that the claim regarding the assertion of the erasure statute was made in good faith and was not made intentionally to delay production. She nevertheless concluded that the failure to produce the report, in the absence of a continuing claim of exemption, constituted a violation of General Statutes §§ 1-210 (a) and 1-212 (a). The commission agreed. The department did not appeal the finding that it had violated FOIA by failing to disclose the unredacted report.

The finding of a violation under these circumstances, to be sure, is rather technical. The department had a colorable claim of exemption when it initially redacted the original charge from the document, and it produced the unredacted document to the plaintiff within a day of withdrawing that claim of exemption. In the court's view, the commission could as reasonably have concluded that *no* violation occurred in light of the department's prompt post-hearing delivery of the unredacted records to the plaintiff. Nevertheless, as of the close

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[6] The record indicates that the department's counsel sent the arrest report and the log book entry, with the original charge unredacted, to the plaintiff by electronic mail on January 26, 2016, one day after the hearing at which the counsel withdrew the claim that the erasure statute prevented disclosure of the original charge. R., p. 431.

of evidence at the third hearing, the department had not yet given the unredacted documents to the plaintiff and had no pending claim of exemption. In those circumstances, and in light of the deference the court must give to the findings of an administrative agency, the court does not conclude that the commission's finding is contradictory, arbitrary, or capricious.

To the extent that the plaintiff's final argument seeks to have the commission or the court decide whether General Statutes § 54-142a requires the redaction of a criminal charge that is reduced to an infraction, the court agrees with the commission that the issue was withdrawn by the department, and no decision is required. To the extent that the plaintiff is complaining of the delay related to the assertion of the erasure statute, the court has addressed that issue above and has concluded that the commission's decision was supported by substantial evidence and was not arbitrary, capricious, or in abuse of its discretion.

IV

CONCLUSION

The court affirms the commission's decision and dismisses the plaintiff's appeal. It is so ordered.

BY THE COURT,

Sheila A. Huddleston

Sheila A. Huddleston, Judge