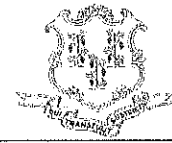


Since 1975



# 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

David Godbout,  
Complainant(s)  
against

Notice of Meeting

Docket #FIC 2013-032

Chief, Police Department, Town of East Lyme; Police Department, Town of East Lyme; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

November 20, 2013

Respondent(s)

### 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 **special 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, December 18, 2013**. 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 November 29, 2013*. 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 November 29, 2013*. **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 November 29, 2013*, 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: David Godbout  
Mark S. Zamarka, Esq.  
Terrence M. O'Neill, AAG and Steven Barry, AAG

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In the Matter of a Complaint by

Report of Hearing Officer

David Godbout,

Complainant

against

Docket #FIC 2013-032

Chief, Police Department, Town of East Lyme; Police Department, Town of East Lyme; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection,

Respondents

November 18, 2013

The above-captioned matter was consolidated for hearing with Docket #FIC 2012-404, David Godbout v. Resident State Trooper, State of Connecticut, Department of Public Safety; State of Connecticut, Department of Public Safety; and Police Department, Town of East Lyme (the "consolidated case"). The complainant requested that the above-captioned matter be given expedited scheduling. By order dated May 8, 2013, this request was denied.

Both matters were scheduled to be heard as contested cases on April 12, 2013, at which time the complainant appeared, however, the respondents Chief, Police Department, Town of East Lyme, and Police Department, Town of East Lyme ("ELPD") failed to appear. On April 12, 2013, Counsel for the ELPD respondents orally moved for a continuance of the April 12, 2013 hearing and the complainant objected to such motion. The Hearing Officer granted the ELPD respondents' motion for continuance and denied the complainant's motion to reconsider granting the ELPD respondents' motion for continuance. The Hearing Officer continued the April 12, 2013 hearing to April 18, 2013, at which time the parties indicated that they reached the terms of an agreement in resolution of the consolidated case, Docket #FIC 2012-404. Based on the terms of the agreement, the complainant withdrew his complaint in the consolidated case.

The Hearing Officer then determined that the Commissioner of the Department of Emergency Services and Public Protection ("DESPP") was a necessary party for the proper disposition of the above-captioned case and added the Commissioner of DESPP and DESPP as party respondents. The Hearing Officer continued the April 18, 2013 contested case hearing with respect to the above-captioned matter to September 19, 2013.

The above-captioned matter was heard as a contested case on September 19, 2013, at which time the complainant and the respondents appeared, stipulated to certain facts and presented argument on the complaint. At the commencement of the September 19, 2013 contested case hearing, the Hearing Officer heard oral arguments on the complainant's August 28, 2013 motions for summary judgment in this matter, or in the alternative, motion in limine to preclude the respondents from introducing any evidence with respect to the claim that disclosure of the records at issue in this matter would result in a safety and security risk under §1-210(b)(19), G.S. Both motions were denied.

The complainant also requested to disqualify the Hearing Officer based on a written request he claims he submitted to the Commission prior to the September 19, 2013 contested case hearing on this matter. Since the complainant failed to provide grounds warranting the disqualification of the Hearing Officer, the request was denied.

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 11, 2013, the complainant requested that the ELPD respondents permit him to inspect the following records:
  - a. "[a]ny records related to handguns the town has/had/possessed including but not exclusive to:
    - i. [i]nvoices and/or purchase order requests[;]
    - ii. [m]aintenance records[;]
    - iii. [c]hain of custody records[;]
    - iv. [s]hipping records[;]
    - v. [e]mails, letters, and other records[;]
    - vi. [d]ocuments relating to why the firearms were obtained[;]
  - b. [a]ny records related to handguns the town [currently] has in its possession or owns without regard to any time period restrictions[;]
  - c. [r]ecords in respect to any tasers or other similar types of devices currently owned or possessed by the town[; and]
  - d. [r]ecords in respect to any other type of firearm, weapon, projectile launching device that are not the subject of item [2.a], [2.b], and [2.c.] above and which have been publicly displayed."

(the "requested records").

3. By email with an attached letter of complaint, all dated and filed on January 23, 2013, the complainant appealed to the Commission, alleging that the ELPD

respondents violated the Freedom of Information (“FOI”) Act by denying him access to the records described in paragraph 2, above.

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 . . . (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 “any person applying in writing shall receive, promptly upon request, a plain, facsimile, electronic or certified copy of any public record.”

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

8. Section 1-210(b)(19), G.S., provides that nothing in the FOI Act requires the disclosure of:

Records when there are reasonable grounds to believe disclosure may result in a safety risk, including the risk of harm to any person, any government-owned or leased institution or facility or any fixture or appurtenance and equipment attached to, or contained in, such institution or facility, except that such records shall be disclosed to a law enforcement agency upon the request of the law enforcement agency. Such reasonable grounds shall be determined . . . by Commissioner of Emergency Services and Public Protection, after consultation with the chief

executive officer of a municipal, district or regional agency, with respect to records concerning such agency. . . . Such records include, but are not limited to:

- (i) Security manuals or reports;
- (ii) Engineering and architectural drawings of government-owned or leased institutions or facilities;
- (iii) Operational specifications of security systems utilized at any government-owned or leased institution or facility, except that a general description of any such security system and the cost and quality of such system, may be disclosed;
- (iv) Training manuals prepared for government-owned or leased institutions or facilities that describe, in any manner, security procedures, emergency plans or security equipment;
- (v) Internal security audits of government-owned or leased institutions or facilities;
- (vi) Minutes or records of meetings, or portions of such minutes or records, that contain or reveal information relating to security or other records otherwise exempt from disclosure under this subdivision;
- (vii) Logs or other documents that contain information on the movement or assignment of security personnel;
- (viii) Emergency plans and emergency preparedness, response, recovery and mitigation plans, including plans provided by a person to a state agency or a local emergency management agency or official; and
- (ix) With respect to a water company, as defined in section 25-32a, that provides water service: Vulnerability assessments and risk management plans, operational plans, portions of water supply plans submitted pursuant to section 25-32d that contain or reveal information the disclosure of which may result in a security risk to a water company, inspection reports, technical specifications and other materials that depict or specifically describe critical water company operating facilities, collection and distribution systems or sources of supply;

9. It is found that, by letter dated March 5, 2013 and pursuant to §1-210(b)(19), G.S., counsel for the ELPD respondents forwarded a copy of the complainant's request described in paragraph 2, above, to the DESPP respondents and requested that DESPP advise the town as to how to respond to the complainant's January 11, 2013 request.

10. Section 1-210(d), G.S., provides in relevant part:

Whenever a public agency . . . receives a request from any person for disclosure of any records described in subdivision (19) of subsection (b) of this section under the Freedom of Information Act, the public agency shall promptly notify . . . the Commissioner of Emergency Services and Public Protection . . . of such request, in the manner prescribed by such commissioner, before complying with the request as required by the Freedom of Information Act . . . If the commissioner, after consultation with the chief executive officer of the applicable agency . . . believes the requested record is exempt from disclosure pursuant to subdivision (19) of subsection (b) of this section, the commissioner may direct the agency to withhold such record from such person. . . . [Emphasis added.]

11. It is found that, by email dated April 17, 2013, the DESPP respondents acknowledged the request made by counsel for the ELPD respondents to conduct a safety and security review of the requested records. It is also found that DESPP advised that ELPD identify and compile all responsive records in ELPD's possession before forwarding such records to DESPP for a safety and security review. It is further found that DESPP informed ELPD of the Commissioner's past determination directing the "protection of records related to weapons used in a training video where the details of the weapon were not publicly revealed."

12. It is found that, by email dated May 9, 2013, counsel for the ELPD respondents informed DESPP that most of the records responsive to the complainant's request described in paragraph 2, above, had been identified and compiled and that the remaining records should be ready for delivery to DESPP within a few days. It is also found that ELPD's Officer Michael Macek identified and compiled three large binders of responsive records.

13. It is found that in late June of 2013, two members of DESPP's legal staff met with ELPD's counsel and Officer Macek, to review the three large binders of responsive records and to advise ELPD on the type of information responsive to the complainant's request that may constitute a safety and security risk if disclosed to the public.

14. It is found that, by letter dated July 22, 2013, the respondent Commissioner of DESPP informed the ELPD respondents that he concluded the review of the requested records and that he determined "there are reasonable grounds to believe that the release of certain records may result in a safety risk." It is also found that the respondent

Commissioner specifically stated that the “disclosure of information with regard to the type, number, and capabilities of weapons that are intended to subdue certain people in order to protect other members of the public, would allow those who may plan violent actions against the Town and its residents to calculate how to defend against the Town’s protective measures, and/or the amount of force that would be necessary to overcome these protective measures.”

15. At the hearing in this matter, the complainant challenged the Commissioner’s determination that he had reasonable grounds to believe the release of certain records requested by the complainant may result in a safety risk, arguing that the Commissioner disregarded the legislative intent of Public Act 13-3 and Public Act 13-220, which require purchases by citizens of assault weapons and large capacity magazines to be registered with DESPP.<sup>1</sup> The complainant also contended that there is a conflict between the Commissioner’s safety and security risk directives described in paragraph 14, above, and the Commissioner’s specific directives described in paragraph 21, below, which instructs ELPD on what to specifically redact from each category of the requested records.

16. The Commission takes administrative notice of the record and final decisions in the following contested cases: Docket #FIC 2011-595, David Godbout v. Department of Emergency Services and Public Protection and City of Stamford (Adopted August 8, 2012); Docket #FIC 2012-130, David Godbout v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; State of Connecticut, Department of Emergency Services and Public Protection; City Manager, City of Norwich; and City of Norwich (Adopted January 9, 2013); Docket #FIC 2012-131, David Godbout v. Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; State of Connecticut, Department of Emergency Services and Public Protection; and City of Stamford (Adopted January 9, 2013); Docket #FIC 2012-376, David Godbout v. Gayle Weinstein, First Selectman, Town of Weston; Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency (Adopted June 26, 2012).

17. It is concluded that, prior to the General Assembly’s enactment of Public Act 13-3 and Public Act 13-220, this Commission had previously considered and approved the respondent Commissioner’s directive concerning the complainant’s request for information concerning records of municipal weapons in Docket #FIC 2011-595, David Godbout v. Department of Emergency Services and Public Protection and City of Stamford (Adopted August 8, 2012). While the complainant believes that the Commissioner’s determination in this case was affected by the passage of Public Act 13-3 and Public Act 13-220, it is found that the complainant provided no evidence that the

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<sup>1</sup> The complainant contended that the Connecticut legislature’s passage of Public Acts 13-3 and 13-220 requiring registration with DESPP of firearms purchased by citizens is evidence that the legislature does not consider the disclosure of firearm purchases to be a safety risk, even when such purchases are made by government. The complainant also contended that if the disclosure of sensitive firearm information by citizens to DESPP under Public Acts 13-3 and 13-220 does not run afoul of the fundamental right of citizens to own guns and protect themselves from government under the Second Amendment of the United States Constitution, the disclosure of similar firearm purchases by government entities like ELPD cannot be determined to be a safety risk by DESPP’s Commissioner.

Commissioner's safety and security risk determination in this case, which involved the same request concerning records of municipal weapons in Docket #FIC 2011-595, by the same complainant, albeit to a different municipality, and the same determination by DESPP, is erroneous or inconsistent with the legislative intent of Public Acts 13-3 and 13-220. Consequently, it is concluded that the Commissioner's determination in this matter is reasonable.

18. Based on the foregoing, it is concluded that the DESPP's Commissioner and DESPP did not violate the FOI Act when they directed the ELPD respondents to withhold records responsive to the request described in paragraph 2, above.

19. The complainant also contended that while he received records responsive to his request described in paragraphs 2.a., 2.b., and 2.c., above, the redactions made to such records were inappropriate. The complainant specifically contended that copies of the requested records provided to him on August 26, 2013, by the ELPD respondents were heavily redacted and such redactions were not consistent with the Commissioner's July 22, 2013 letter directing ELPD to make safety and security redactions specific to each of the four categories of requested records described in paragraph 2, above. The complainant also contended that information in the records provided to him, such as the capacity of taser cartridges publicly worn as part of the ELPD Officer uniform, was incorrectly redacted by the ELPD respondents. The complainant further contended that the respondents did not provide him with all of the requested records described in paragraph 2.d., above, such as records related to projectile launching devices and publicly used "long arm" firearms, such as rifles.

20. As to the records described in paragraph 2, above, the respondents contended that they provided the complainant with all responsive records in compliance with the safety and security risk determinations made by the Commissioner of DESPP in his July 22, 2013 letter to ELPD. The ELPD respondents also contended that while some of the records reviewed during the safety and security review contained information about "long guns," such firearms are not publicly displayed as part of an ELPD officer's daily uniform, and therefore, are not subject to disclosure based on the safety and security risk determination of DESPP's Commissioner.

21. It is found that, in addition to the directives described in paragraph 14, above, the respondent Commissioner directed the ELPD respondents to redact certain information corresponding to each of the four categories of records requested by the complainant as described, below:

- a. "[i]tems [2.a. and 2.b.]: Disclosure of basic information on the type and number of handguns that are carried by East Lyme law enforcement officers in a public manner (i.e., on the officer's belt) is appropriate. The following information should not be disclosed: locations of these weapons; the conditions of the weapons, including maintenance records; chain of custody (who has the



weapons when); specialized apparatus or changes to these weapons; any other records that would reveal their tactical capabilities; records on the training received by particular officers. Records related to why firearms were obtained can be released provided that no information on non-public weapons, or otherwise protected information as described above, will be revealed[;]

- b. [i]tem [2.c.]: If tasers are worn by East Lyme officers as part of their uniform in a public manner, then basic information on the type and number of tasers may be disclosed. If, however, tasers are carried only by certain officers who are part of a tactical response, then these records should not be disclosed[; and]
- c. [i]tem [2.d.]: With regard to all other weapons "publicly displayed," you should not disclose records that reveal details regarding the capabilities of these weapons, or otherwise provide a tactical advantage to a potential wrongdoer. The need to protect this type of information has become even more clear in light of recent mass shooting and bombing incidents that have demonstrated the sophisticated preparations that an individual or individuals may make in order to cause maximum harm."

22. It is found that the ELPD respondents provided the complainant with redacted copies of responsive records on August 26, 2013.

23. With respect to the complainant's claims that ELPD inappropriately redacted and withheld requested records, the complainant submitted a copy of the records provided to him by ELPD on August 26, 2013, marked Claimant's Exhibit D.

24. After careful review of Exhibit D, it is found that Officer Maceck redacted and withheld responsive records related to the type, number, and capabilities of weapons, such as tasers and firearms that are intended to subdue certain people in order to protect other members of the public, and [records that] would allow those who may plan violent actions against the Town and its residents to calculate how to defend against the Town's protective measures, and/or the amount of force that would be necessary to overcome these protective measures." Officer Maceck credibly testified and it is also found that he redacted specific information that would give the public "the tactical advantage and/or capacity" of specific firearm cartridges.

25. It is found that the information redacted or withheld by Officer Maceck was in compliance with the July 22, 2013 letter from the Commissioner of DESPP containing his safety and security risk determination. While there were redactions on pages that appeared to the complainant to be intentional and inconsistent with the Commissioner's

safety and security risk determination, Officer Macek credibly testified, and it is further found, that the sparse black marks referred to by the complainant were a result of the inadvertent bleed-through between pages caused by the marker used by Officer Macek to conduct the redactions.

26. It is concluded that pursuant to §1-210(b)(19), G.S., the redacted information and withheld requested records are exempt from disclosure.

27. It is concluded, therefore, that the ELPD respondents did not violate the disclosure provisions of §1-210(b)(19), G.S., by withholding requested records and providing the complainant with the redacted version of records described in paragraphs 22 through 25, above.

28. The complainant contended that all respondents violated the promptness provisions of the FOI Act. The complainant specifically contended that 228 days elapsed between the time of the complainant's initial request on January 11, 2013 and the time he received copies of responsive records on August 26, 2013. The complainant also contended that forty-seven days elapsed between the time he made his request with ELPD and when ELPD requested a safety and security review from DESPP. In addition, the complainant contended that fifty-six days elapsed between the time DESPP received copies of the responsive records from ELPD and when DESPP completed their safety and security review of such records.

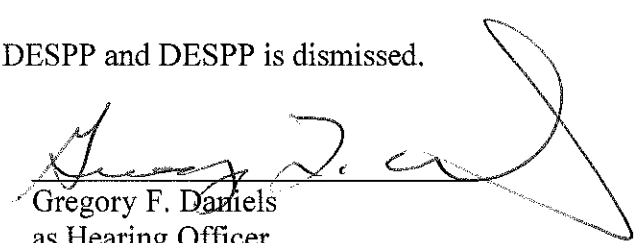
29. It is found that voluminous, unredacted copies of the requested records were identified and compiled by Officer Macek in response to the complainant's request, requiring assembly in three, three-ringed binders. It is also found that the respondents provided the complainant with redacted copies of responsive records on August 26, 2013, just over one month after DESPP's Commissioner sent his July 22, 2013 letter directing ELPD to withhold certain firearm information the Commissioner reasonably believed to be exempt under §1-210(b)(19), G.S.

30. It is found that on March 5, 2013, the ELPD respondents first contacted DESPP's Commissioner concerning the complainant's January 11, 2013 request for records. By the express terms of §1-210(d), G.S., ELPD was required to promptly notify DESPP's Commissioner "before complying with the request." It is found that the ELPD respondents notified DESPP's Commissioner before complying with the complainant's request; however, they did not do so promptly, within the meaning of §1-210(d), G.S.

31. As to the complainant's promptness claim against DESPP, it is concluded, under the facts and circumstances of this case, that the DESPP respondents did not violate the promptness requirement under the FOI Act.

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

1. Henceforth, the ELPD respondents shall strictly comply with the promptness provision of §1-210(d), G.S.
2. The complaint against Commissioner of DESPP and DESPP is dismissed.



Gregory F. Daniels  
as Hearing Officer