

FREEDOM OF INFORMATION COMMISSION  
OF THE STATE OF CONNECTICUT

In The Matter of a Complaint by

FINAL DECISION

William Lyons,

Complainant

against

Docket #FIC 2017-0716

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

Respondents

August 22, 2018

The above-captioned matter was heard as a contested case on March 20, 2018, at which time the complainant and the respondents appeared, stipulated to certain facts and presented testimony, exhibits and argument on the complaint.

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 September 27, 2017, the complainant made a request to the respondents for the following records:

[a] A complete copy of Roxbury Police Officer Jones's file from January 1, 2017 to the present date in any way whatsoever related to William R. Lyons, Jr., date of birth October 3, 1962 and social security number [omitted] of 13 Danbury Road, New Milford, Connecticut 06776;

[b] Copies of all communication in any way whatsoever related to Mr. Lyons for said time frame (by CD);

[c] Copies of any and all video regarding the above named person and time frame; and

[d] Copies of all cell phone records for any cell phone(s) used in any way related to Officer Jones's communications in any way whatsoever related to Mr. Lyons for the period of January 1, 2017 to the present date, with all relevant calls identified by name (all others may be redacted). ("September 27<sup>th</sup> request").

3. It is found that, by letter dated September 28, 2017, the Legal Affairs Unit for the respondents Commissioner, State of Connecticut, Department of Emergency Services and Public Protection; and State of Connecticut, Department of Emergency Services and Public Protection (collectively, "DESPP"), informed the complainant that his request had been received by DESPP and that he would be contacted once the records had been located.

4. It is found that, by email sent on October 30, 2017, DESPP informed the complainant that there were no videos responsive to the complainant's September 27<sup>th</sup> request, and that the remaining items requested "would be items the Town would possibly be in possession of." Subsequently, after further communications with the complainant, DESPP discovered that the complainant also sought audio recordings, which were provided to the complainant. In addition, it is found that by email sent on February 14, 2018, DESPP advised the complainant that although the complainant's September 27<sup>th</sup> request did not include a request for any incident reports regarding William R. Lyons, an incident report did exist. DESPP informed the complainant that in order for it to search for and provide a copy of the incident report, a payment of the statutory fee of \$16.00 was required.

5. By letter received and filed on November 30, 2017, the complainant appealed to this Commission, alleging that the respondents violated the FOI Act by denying him access to the requested records, described in paragraph 2, above.

6. 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.

7. 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. Any agency rule or regulation, or part thereof, that conflicts with the provisions of this subsection or diminishes or curtails in any way the rights granted by this subsection shall be void. Each such agency shall keep and maintain all public records in its custody at its regular office or place of business in an accessible place and, if there is no such office or place of business, the public records pertaining to such agency shall be kept in the office of the clerk of the political subdivision in which such public agency is located or of the Secretary of the State, as the case may be.

8. 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.”

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

10. With respect to respondent DESPP’s response to the complainant’s September 27<sup>th</sup> request, at the hearing, DESPP testified that the only records responsive to such request in their possession were the audio recordings, described in paragraph 4, above. They testified that although there was an incident report regarding Mr. Lyons, DESPP did not interpret the September 27<sup>th</sup> request to include a request for copies of any incident reports.

11. It is found that DESPP’s interpretation of the September 27<sup>th</sup> request, as described in paragraph 10, above, was reasonable.

12. It is found that DESPP provided the complainant with all records responsive to his September 27<sup>th</sup> request. Accordingly, it is concluded that DESPP did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

13. With respect to the Roxbury respondents’ response to the complainant’s September 27<sup>th</sup> request, it is found that the town never contacted nor provided any records to the complainant.

14. At the hearing, the respondent Town Constable contended that she did not have any records responsive to the complainant’s September 27<sup>th</sup> request. The Constable testified that although there was an incident report regarding Mr. Lyons, she did not maintain a file, and that any request for an incident report must be made to the State Police. Both DESPP and the Constable contended that, pursuant to the Resident Trooper Contract between the Town and the State Police, all of the respondent police department’s incident reports are maintained exclusively by DESPP, and that DESPP is the custodian of all the respondent police department’s incident reports wherever they are maintained.

15. This Commission takes administrative notice of the State of Connecticut's Resident State Trooper Program in which a State Trooper provides police services to a town pursuant to the Resident State Trooper Contract between that town and the State of Connecticut. This Commission also takes administrative notice that the resident state trooper that serves the Town of Roxbury supervises the operational aspect of the town's police department.

16. It is found that the Resident State Trooper Contract between the State Police and the Town<sup>1</sup>, provides in relevant part:

Section I.A.: 'The Towns hereby delegate to the State Police the authority to supervise and direct the law enforcement operations of appointed constables and police officers in the Town....'

Section I.D.: 'All police investigative records generated by the Towns' officers shall be the property of DESPP State Police and shall be prepared, formatted and submitted to DESPP State Police in the manner approved by DESPP State Police. The Towns shall respond to any Freedom of Information requests for such records by informing the requester that such records are under the sole custody and control of DESPP State Police. The Towns may direct requests for motor vehicle accident reports to the Troop for processing in accordance with DESPP State Police policy.'

17. It is found that the contract, on its face, delegates the Town's law enforcement authority specifically to the State Police, and requires reports to be maintained by the State Police. It is also found that the contract, on its face, delegates the Town's FOI obligations and record-keeping responsibilities to the State Police. It is found, however, that the Resident State Trooper Contract does not supersede the FOI Act, and the Town is required, under §§1-210(a) and 1-212(a), G.S., of the FOI Act, to provide a copy of records that the Town also maintains, upon request.

18. It is found that the Town Constable does not maintain a file, nor any other records, responsive to the complainant's September 27<sup>th</sup> request. Although the Constable had access to the incident report regarding Mr. Lyons, a reasonable interpretation of the September 27<sup>th</sup> request, as already found in paragraphs 10 and 11, above, does not include a request for any incident reports. Accordingly, it is concluded that, under the facts and circumstances of this matter, the Town did not violate the disclosure provisions of §§1-210(a) and 1-212(a), G.S.

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 as to all respondents.

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<sup>1</sup> A copy of the Resident State Trooper Contract between the State of Connecticut and the Towns of Bridgewater and Roxbury was filed as an after-filed exhibit, and marked as Joint Exhibit E.

Approved by Order of the Freedom of Information Commission at its regular meeting of August 22, 2018.



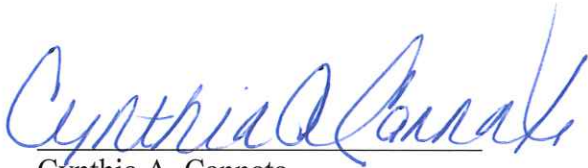
Cynthia A. Cannata  
Acting Clerk of the Commission

PURSUANT TO SECTION 4-180(c), G.S., THE FOLLOWING ARE THE NAMES OF EACH PARTY AND THE MOST RECENT MAILING ADDRESS, PROVIDED TO THE FREEDOM OF INFORMATION COMMISSION, OF THE PARTIES OR THEIR AUTHORIZED REPRESENTATIVE.

THE PARTIES TO THIS CONTESTED CASE ARE:

**WILLIAM LYONS**, c/o Attorney Paul J. Garlasco, 83 Park Lane Road, New Milford, CT 06776

**COMMISSIONER, STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION; STATE OF CONNECTICUT, DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION**, c/o Assistant Attorney General Stephen R. Sarnoski, Office of the Attorney General, 110 Sherman Street, Hartford, CT 06105; **CONSTABLE, TOWN OF ROXBURY; AND TOWN OF ROXBURY**, c/o Attorney Tara L. Shaw, Secor, Cassidy & McPartland, P.C., 41 Church Street, PO Box 2818, Waterbury, CT 06723-2818



Cynthia A. Cannata  
Acting Clerk of the Commission