

**STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION**

Shawn Dowdell,)	Docket # FIC 2018-0134
)	
)	
Complainant,)	
)	
against)	
)	
Commissioner, State of Connecticut)	
Department of Emergency Services and)	
Public Protection; and State of Connecticut,)	
Department of Emergency Services and)	
Public Protection,)	
)	
Respondents.)	October 31, 2018

Complainant’s Post-Hearing Brief

On December 14, 2017, employees of the New Britain Police Department (NBPD) killed complainant Shawn Dowdell’s son. Five NBPD officers stopped the car he was in and, claiming that the car attempted to flee, opened fire on Zoe Dowdell and the two other young men in the vehicle. They were 20, 18, and 15 years old at the time. Zoe Dowdell was shot in the neck and died. That same night, the Connecticut State Police opened a use-of-force investigation into the incident, in anticipation of a State’s Attorney beginning an inquiry in accordance with General Statutes § 51-277a.¹

¹ General Statutes § 51-277a requires the Division of Criminal Justice to conduct an investigation “[w]henver a peace officer, in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof.” Since 1998, these investigations have been conducted by the State’s Attorney’s office for a different Judicial District from the location where the use of force occurred. *See* Public Acts 1998, No. 98-048.

Shawn Dowdell asked the Connecticut State Police² and NBPB for information about his son's death in March 2018; the Commission held a hearing on each request on October 3, 2018. To this day, Mr. Dowdell remains waiting for records showing what happened to his son. Because the record developed by the state police shows nothing more than a blanket preference to withhold records until the State's Attorney releases the investigation results, the Commission should order the records' immediate disclosure.

I. Summary of the Record

Shawn Dowdell requested that the state police produce three categories of records:

- 1) All records documenting the killing of Zoe Dowdell by New Britain employees on December 14, 2017, including but not limited to video and/or audio recordings;
- 2) All records leading up to New Britain employees' contact with Zoe Dowdell on December 14, 2017, including but not limited to all radio logs, dispatch logs, 911 calls, and any other calls for service; and
- 3) All records documenting New Britain employees' involvement in the death of Zoe Dowdell on December 14, 2017, including but not limited to all incident reports, arrest reports, reports to prosecutors, use of force reports, or death-in-custody reports.

His request was delivered by certified mail on March 5, 2018. Respondent constructively denied that request by failing to respond to Mr. Dowdell in any way. On March 13, 2018, Complainant appealed to the Freedom of Information Commission (FOIC).

At a hearing before Commissioner Matthew Streeter, Respondent defended its withholding of responsive records solely on the basis of General Statutes § 1-210(b)(3)(D).³ It relied upon the testimony of a single witness, John Smriga, the State's Attorney for the Fairfield

² The clerk of the Commission added the state police's umbrella agency, the Department of Emergency Services and Public Protection, and its commissioner, as parties. For convenience, Mr. Dowdell will refer to them collectively as "the state police" or "Respondent."

³ That exemption excuses production of "information to be used in a prospective law enforcement action if prejudicial to such action."

Judicial District, who has been overseeing the use-of-force investigation into Zoe Dowdell's death since mid-April 2018.

Mr. Smriga agreed that his office is not the public agency that is asked to produce records to Mr. Dowdell. Transcript of record at 30:15-19.⁴ Instead, all of the records responsive to Mr. Dowdell's request were created or acquired by the state police or the New Britain police. *Id.* at 47:15-21, 48:13-16. Smriga's office possesses copies of some records given to him by the state police as part of the investigation of Zoe Dowdell's killing. *Id.* at 11:10-12, 13:12-17, 23:11-13; *see generally id.* at 47:22-49:1 (describing how information relating to the investigation has been compiled by the state police). He did not conduct any search for the records called for by Mr. Dowdell's request. *Id.* at 18:13-16, 42:22-24. Among the state police records in his possession, Smriga did not know "what would be responsive to [Mr. Dowdell's] request specifically." *Id.* at 43:4-6. He did not know how many responsive records there are, *id.* at 24:14-17, 26:23-27:1, had not completed even a preliminary review of the records provided to him by the state police for the use-of-force investigation, *id.* at 13:18-14:7, 25:3-12, and had never *seen* Mr. Dowdell's request before it was shown to him at the hearing. *Id.* at 20:5-8.

And, although Mr. Smriga did not instruct the state police to withhold records from Mr. Dowdell, *id.* at 30:15-21, he testified that if consulted, he would give that instruction. *Id.* at 52:17-53:3. Smriga would do so because the unwritten policy of his office is "not to release records during any investigation, if there is a potential for a subsequent criminal prosecution." *Id.* at 31:5-8. In his view, there are no circumstances in which records relevant to a criminal investigation should be produced to the public before a charging decision has been reached. *Id.*

⁴ Mr. Dowdell has obtained a certified transcript of the Commission's recording of the hearing and has attached it to this brief.

at 31:5-14. Smriga explained his preference against disclosure as being based on his surmise that any data released “potentially could taint the statement taken from a person who presents as a witness,” that is, a person might claim to have seen “things that they didn’t actually see because they were possessed of information . . . from my investigation . . .” *Id.* at 14:23-15:8. *See also id.* at 16:17-21 (repeating the same reasoning as applied to witness statements), 16:22-17:2 (same as to video recordings). Mr. Smriga did not identify any other basis for the state police’s withholding of records from Mr. Dowdell, relying solely on what he posited was potential prejudice to a law enforcement action. *See id.* at 53:4-5 (confirming that he would instruct the state police to withholding for the reasons of prejudice he had articulated earlier in his testimony).

The state police chose not to adduce any further evidence in support of their withholding beyond Smriga’s testimony. Bearing no burden of proof—and not knowing what responsive records the state police may have—Mr. Dowdell rested after cross-examining the witness.

II. There is No Evidence in the Record That Respondent Made Any Search for Responsive Documents, and the Commission Should Order It to Do So

Under FOIA, respondents have a duty to conduct a diligent search for the requested records, including those stored in paper format and electronically. *See* G.S. § 1-211(a). If the Commission concludes that respondents failed to conduct a sufficiently thorough search, it may require the agency to promptly conduct such a search,⁵ and to submit affidavits detailing who

⁵ The FOIC has ordered agencies, including law enforcement agencies, to conduct diligent searches on many occasions. *See, e.g., Mastrony v. Chief, Police Dep’t, City of Bridgeport*, No. FIC 2015-130 (Oct. 28, 2015); *Stedronsky v. Caruso*, No. FIC 2014-251 (Mar. 11, 2015) (requiring respondent to review at least 900 emails per week); *Aronow v. Univ. of Conn. Health Ctr.*, No. FIC 2013-744 (Oct. 22, 2014); *Brow v. City of East Haven*, No. FIC 2012-012 (Oct. 10, 2012) (criticizing respondent’s failure to search for records before denying the request or at any time thereafter, and to read the request before the FOIC hearing).

conducted the search, what methods were used, and what documents were found.⁶ Given Respondent's failure to demonstrate that it made *any* search for the records sought by Mr. Dowdell, those obligations should be imposed here.

Respondent's sole witness, Mr. Smriga, was wholly unable to testify to what search, if any, the state police undertook in response to the request. Mr. Smriga was not involved in any search for the documents sought in the request. He had not yet reviewed all of the records sent by the state police on the use-of-force investigation, and could not say with certainty whether the state police had any responsive records that were not included in the files provided to him.

Given this testimony from its sole witness, Respondent plainly has not satisfied its burden to show that it conducted a timely and diligent search for responsive records. Mr. Smriga does not work for the Respondent state police and was not involved to any extent with the response to Complainant's request. Without any evidence in the record demonstrating any search by Respondent, neither Complainant nor the Commission can be satisfied that a proper search occurred.

III. Having Never Reviewed any Responsive Records Held by a Public Agency, a Third Party's Testimony About Such Records is Useless to Adjudge § 1-210(b)(3)(D) Withholding

Respondent must disclose all responsive records unless it can meet the burden of showing that the records are exempt under FOIA. Respondent has the burden of proving that an exemption applies to each of the withheld records. Because "[t]he general rule, under the act . . . is disclosure," the Connecticut Supreme Court has held that "[e]xceptions to that rule will be

⁶ The FOIC has also ordered affidavits regarding agencies search procedures on many occasions. *See, e.g., Lopez v. Chief, Police Dep't, City of Bridgeport*, No. FIC 2014-402 (Apr. 22, 2015); *Mastrony; Hunt v. Glover*, No. FIC 1996-612 (Sept. 10, 1997). This practice is supported by precedent. "Our supreme court has recognized the FOIC's authority to order the submission of affidavits to prove the existence or non-existence of records. Such affidavits 'must not be couched in conclusory language.'" *Newtown Bd. of Educ. v. Freedom of Info. Comm'n*, No. CV 9605558171, 1997 WL 625438, at *7 (Conn. Super. Ct. Oct. 3, 1997) (quoting *Wilson v. Freedom of Info. Comm'n*, 181 Conn. 324, 341 (1980)).

narrowly construed in light of the underlying purpose of the act and the burden of proving the applicability of an exemption rests upon the agency claiming it.” *Wilson v. Freedom of Info. Comm’n*, 181 Conn. 324, 328 (1980) (citations omitted).

In this case, the sole claimed exemption is General Statutes § 1-210(b)(3)(D), which exempts from mandatory disclosure “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 . . . information to be used in a prospective law enforcement action if prejudicial to such action.”

To withhold records under § 1-210(b)(3)(D), a public agency must make “an evidentiary showing (1) that the records are to be used in a prospective law enforcement action and (2) that the disclosure of the records would be prejudicial to such an action.” *Dep’t of Pub. Safety v. Freedom of Info. Comm’n*, 51 Conn. App. 100, 105 (1998). In doing so, an agency must “provide more than conclusory language, generalized allegations or mere arguments of counsel. Rather, a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested.” *City of New Haven v. Freedom of Info. Comm’n*, 205 Conn. 767, 776 (1988). The agency must create a record with enough detail “to present the commission with an informed factual basis for its decision in review under the act.” *Wilson*, 181 Conn. at 341.

When respondents fail to offer sufficient evidence of prejudice to a law enforcement action, they must promptly disclose the withheld records. *See, e.g., Sedensky v. Freedom of Info. Comm’n*, No. HHBCV136022849S, 2013 WL 6698055, at *15 (Conn. Super. Ct. Nov. 26, 2013) (ordering release of 911 calls made during the Sandy Hook school shooting); *Hartford v. Freedom of Info. Comm’n*, 201 Conn. 421 (1994) (holding that plaintiffs did not adequately

prove they met the FOIA personnel records exemption because they said only “in broad, conclusory terms” that disclosure “might” negatively affect a police operation); *Romitti v. Comm’r, State of Conn., Dep’t of Emergency Services and Pub. Protection*, No. FIC 2015-606 (requiring disclosure of 911 calls withheld under the law enforcement exemption); *Goren v. Nasto*, No. FIC 2007-165 (Nov. 28, 2007) (requiring disclosure of emails withheld under the law enforcement exemption).

A. There is No Evidence in the Record that Each Responsive Document Will be Used in a “Prospective Law Enforcement Action”

Respondent made no showing that each of the withheld records would be used in the use-of-force investigation or any criminal prosecutions arising out of it. Mr. Smriga could not have testified that all of the records in his possession would be used in the investigation, simply because he did not review all of the records and did not know which records he had not yet read. Transcript at 25:13-14.

Further, the state police may have additional responsive files. The state police offered no information that it searched for or reviewed such files, so cannot say whether these files would be used in a prospective law enforcement action. Without an evidentiary showing that *each* of the withheld records will be used in a prospective law enforcement action, Respondent has failed to meet the first part of its burden to prove the exemption’s applicability.

B. There is No Basis to Conclude That Disclosure of Each Responsive Document to be Used in a “Prospective Law Enforcement Action” Would Prejudice that Action

Respondent has also failed to make an evidentiary showing that “the disclosure of the records would be prejudicial to such an action.” *Dep’t of Pub. Safety*, 51 Conn. App. at 105. Respondent’s sole witness, Mr. Smriga, had not reviewed all of the records and thus could not show the harms each would cause if disclosed. Instead, Respondent relies exclusively on Mr.

Smriga’s conclusory language, speculation, and generalized allegations, rather than specific details of how the disclosure of each withheld record would prejudice the use-of-force investigation. And, several documents and pieces of information related to Zoe Dowdell’s killing have already been released without issue—undermining Respondent’s argument that no records related to the shooting can be disclosed without harm to the use-of-force investigation.

1. Respondent’s Lone Witness Could Not Speak to Prejudice Because He Had Not Reviewed the Responsive Records

Mr. Smriga testified that he had not seen, viewed, or listened to each of the records that might be responsive. He could not say what portion of the records he had reviewed. He could not say which types of records he had not yet seen. He could not say if he had viewed all of the dash cam footage, or just some of it. He had never seen the request for these records before it was presented to him at the hearing.

This testimony places Respondent’s assertions squarely in a position the courts have already rejected, in which the assertion of prejudice to a prospective law enforcement action is “wholly undermined by” an agency’s reliance on the testimony of a witness who has not reviewed the records. *Sedensky* at *15. The Connecticut Supreme Court reaffirmed this precedent just days ago, upholding the Commission’s finding that the state police “failed to produce any evidence that the documents were exempt from disclosure” where they “only made legal argument and presented testimony of, and an affidavit from, witnesses who had never seen the documents at issue.” *Comm’r of Emergency Servs. and Pub. Protection v. Freedom of Information Comm’n*, Nos. SC 19852 and SC 19853, slip op. at 15-16 (Conn. Oct. 30, 2018). Mr. Smriga’s testimony is no different. In order to show that each withheld record would prejudice a prospective law enforcement action, Respondent needed to produce a witness who could credibly

speak to the contents of each such record, or at least one who had reviewed all the records. It chose not to.

2. Mr. Smriga's Testimony Was the Definition of Speculation and Generalization

Because Mr. Smriga had not reviewed each record, he could not meet Respondent's burden to "provide more than conclusory language, generalized allegations or mere arguments of counsel." *City of New Haven*, 205 Conn. at 776. Instead, Mr. Smriga claimed that *no* records could ever be released before an investigation's conclusion. He said that "the general policy of the state's attorney's office not to release records during any investigation, if there is a potential for a subsequent criminal prosecution." Transcript at 31:5-8. In reliance on such policy, Smriga testified that "if somebody were to ask me [if they could release the records], I would instruct them not to." *Id.* at 52:17-18. This is exactly the blanket policy from the State's Attorney's office that the FOIC and courts have firmly rejected. *See Dep't of Pub. Safety*, 51 Conn. App. At 105; *Schoenhorn*, No. FIC 2007-520 at paras. 33-36.

Mr. Smriga speculated that every single record in his files could cause unspecified harms to the use-of-force investigation, and that "any information specific to the investigation" could be the culprit. Transcript at 35:18-20. Further, he acknowledged that—nearly a year after the incident—state police investigators have already collected and sent him their witness statements. *Id.* at 34:6-10. He said he was unaware of any particular witness the investigators had interviewed since sending him the files in August. *Id.* Given his reliance on a blanket policy of withholding all records before an investigation's closure, his not having read the requested records, and his conclusory statements, Mr. Smriga's testimony does not satisfy Respondent's burden to make an evidentiary showing of harm to the prospective law enforcement action.

Nor does Mr. Smriga's preference for a blanket refusal to release records before his work is complete. FOIA "does not require that an investigation be closed before disclosure is required," *Dep't of Pub. Safety*, 51 Conn. App. at 105, and the Commission has ordered disclosure of records from ongoing investigations on many occasions. In *Department of Public Safety*, the Supreme Court upheld the FOIC's order requiring the state police to disclose investigative records related to a drowning that was the subject of an ongoing investigation. In doing so, the Court rejected respondent's claims that they had not reviewed the records and that they could not release anything until the investigation's end. *Id.* In *Schoenhorn*, the FOIC required respondent police chief to release the requested 911 calls and police radio transmissions because he had failed to make the required evidentiary showing of prejudice to a prospective law enforcement action. Instead, respondents had relied on a blanket policy of withholding all records before an investigation's completion, pursuant to a 2002 memorandum from the Hartford State's Attorney. The Commission rejected this policy of withholding records "merely because a representative of the State's Attorney's Office objects to disclosure on the grounds that the case is still pending," and declared the memorandum null and void. *Schoenhorn*, No. FIC 2007-520, para. 2; *see also Romitti*.

3. Mr. Smriga's Guesswork and Conclusory Statements are Undermined by Public Disclosures of Information About Zoe Dowdell's Killing

Additionally, the fact that Respondent and the NBPD have publicly released information regarding Zoe Dowdell's shooting and the subsequent investigation to the public undermines Respondent's claims that it cannot release a single record for fear of prejudice to the use-of-force investigation. However, details of the shooting and Zoe Dowdell's death became public the day of its occurrence, with the NBPD making statements to the press and public. *See, e.g.,* R. Blair & S. Goode, "New Britain Chief: Five Officers Fired Their Guns In Fatal Police Shooting,"

Hartford Courant, Dec. 18, 2017; J. Carlesso, “Police Identify Driver Shot By New Britain Officers Thursday,” Hartford Courant, Dec. 16, 2017; J. Lee & K. Naples, “Suspect Dead in New Britain Officer-Involved Shooting,” WFSB, Dec. 14, 2017.

The NBPB released more information in response to consolidated cases that Zoe Dowdell’s parents, Shawn Dowdell and Sherene Fagon, brought against the NBPB when it denied their requests for records related to their son’s death. *See* Docket Nos. FIC 2018-0136; 2018-0168. The twelve pages of documents released contained details on the incident, the names of the five NBPB officers involved, the steps NBPB was taking internally, and the terms of the officers’ restricted duty orders. And in a FOIA case brought by *Hartford Courant* reporters Matthew Kauffman and Don Stacom, the NBPB released nine pages of documents, including the investigation report for Noah Young, one of the two young men in the car with Zoe Dowdell. *See* Docket No. FIC 2018-001. The report goes into detail on the car they were driving, the investigator’s version of the events that occurred, Zoe Dowdell’s death, and Mr. Young’s arrest. Respondent has not contended that any of these disclosures have prejudiced the use-of-force investigation. It is likely that some of the withheld records are no more detailed than the statements and documents already released.

C. Nothing in the Record Establishes that the Information Sought by Mr. Dowdell is Not Otherwise Available to Him

Because § 1-210 (b)(3)(D) only applies to records “not otherwise available to the public,” Respondent must disclose any records that *are* available to the public. This includes dash cam footage of the incident during which Zoe Dowdell was killed, which has already been disclosed to Noah Young’s attorney, Jessica Coderre, without a protective order as part of discovery in the

prosecution of Mr. Young. *See* Complainant’s Hrg. Ex. B, Affidavit of Jessica Coderre.⁷ This leaves Ms. Coderre free to do with the footage as she wishes, including disseminate it to the press and public. Additionally, other withheld records are likely “otherwise available.” NBPD released Mr. Young’s investigation report in case FIC 2018-001, but not this one. Other records will be turned over to the attorneys for Mr. Young and Mr. Tisdol during discovery, potentially also without a protective order. The state police’s files may also contain clippings of press reports, official press releases, court dockets, and similarly public documents. Any such otherwise-available records cannot be lawfully withheld.

IV. The Fact that a Third Party has Copies of Some Responsive Records is Irrelevant to Resolving this Case

Lastly, the state police briefly contended at the close of the hearing that Mr. Dowdell’s request was an impermissible end-run around the statute exempting State’s Attorneys’ non-administrative records from FOIA. Transcript at 60:18-61:10; *see* G.S. § 1-201. The suggestion is a non-sequitur for two reasons.

First, FOIA looks to whether an agency has custody or control over a record, not whether the agency may have given a copy to a third party that is beyond the reach of the Act. G.S. § 1-206(a) (obligating the public employee “who has custody or control of the public record” to provide a written reason for any denial); *id.* § 1-206(2) (guaranteeing the custodian the opportunity to be heard at an FOIC hearing about the records, and permitting the Commission to levy civil penalties against the custodian). If the state police meant to justify the withholding of

⁷ The Commission may consider “[a]ny oral, documentary or other evidence,” so long as it is not “irrelevant, immaterial or unduly repetitious.” Conn. Agencies Regs. § 1-21j-37(a); *see also, e.g., Cassella v. New Britain Civil Serv. Comm’n*, 4 Conn. App. 359, 362 (1985) (“There is moreover, no specific prohibition against hearsay evidence in the Uniform Administrative Procedure Act.”) (internal quotation omitted). The Commission may consider evidence submitted in written form rather than in oral testimony, G.S. §§ 4-178, and should add Ms. Coderre’s affidavit to the record here. Conn. Agencies Regs. § 1-21j-38.

responsive records by claiming that it lacks custody or control over them, then its failure to introduce any evidence tending to prove that point dooms such a justification.

Second, whether a third party has responsive records does nothing to illuminate whether the state police may justify the withholding of the information Mr. Dowdell seeks under § 1-210(b)(3)(D). The state police could possess a super- or subset of the information reportedly held by the Fairfield State's Attorney, but they chose not to create any evidentiary record about what responsive information they possess. Unsurprisingly, Mr. Smriga could not say for sure if the state police had documents it did not give him, and made no claim to have searched the state police premises and computer systems for responsive records. If the various State's Attorney's offices are exempt, so be it, but they are not the agencies to which Mr. Dowdell directed the request and are not the ones responsible for providing prompt access to the responsive records. General Statutes § 1-210(a).

V. Conclusion

Respondent has failed to meet its burden of showing that disclosure of the requested records would harm a prospective law enforcement action. Instead, Respondent relies on the speculation of a single witness who did not read the request at issue, did not conduct a search for responsive records, and did not review all of the records in Respondent's custody. The Commission should therefore order Respondent to conduct a prompt, diligent search for the requested records, and order the disclosure of all such records.

If the Commission considers the dispute unripe for ordering disclosure of all responsive records, it should conduct an in camera inspection of the records. The Commission has full discretion to order an in camera inspection, not only in cases where the nature of the records is in dispute. Conn. Agencies Regs. § 1-21j-37(f)(1). Because "a sufficiently detailed record must reflect the reasons why an exemption applies to the materials requested," *City of New Haven*,

205 Conn. at 776, and Respondent has failed to make such a record, an in camera inspection would provide much-needed information on the records' contents.

Finally, and regardless of whether it orders in camera inspection, the Commission should order the disclosure of any records that are otherwise available to the public, such as the dash cam footage and records released in response to other records requests.

/s/ Sasha Dudding

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Counsel for Mr. Dowdell

Attachment:

Transcript of Record

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Dowdell v. Commissioner
State of Connecticut Department of Emergency Services
and
Public Protection
Sasha Dudding
Docket: FIC-2018-0134

1 COMMISSIONER MATT STREETER: All right,
2 this is a hearing in the matter of Docket FIC-
3 2018-0134, a complaint by Shawn Dowdell versus
4 Commissioner of the State of Connecticut
5 Department of Emergency Services and Public
6 Protection and the State of Connecticut
7 Department of Emergency Services and Public
8 Protection.

9 My name is Matt Streeter. I am
10 Commissioner and have been designated as a
11 hearing officer in this matter. With me today is
12 attorney Kathleen Ross who is counsel for the
13 commissioner and will be assisting me here today.
14 Attorney Ross can answer all procedural
15 questions, should you have any.

16 I will note for the record that the
17 time is 1:04 p.m. and today's date is October
18 3rd, 2018. Our hearing is scheduled for an hour
19 and a half. Will the parties identify themselves
20 for the record, please?

21 MR. BARRETT: Commissioner, my name is
22 Dan Barrett. I'm counsel for Mr. Dowdell and I'm
23 joined at counsel table by law student Sasha
24 Dudding from Yale who is here co-counseling in
25 her Connecticut student practice role with leave

1 of the commission.

2 COMMISSIONER MATT STREETER:

3 (Indiscernible) no objection?

4 MR. O'NEILL: I have no objection.

5 COMMISSIONER MATT STREETER: No

6 problem. Welcome.

7 MS. DUDDING: Thank you.

8 MR. O'NEILL: Commissioner, good
9 afternoon. Terrance O'Neill, assistant attorney
10 general for the respondents.

11 COMMISSIONER MATT STREETER: Thank you.
12 Based on what transpires today, we will prepare a
13 hearing officer's report which will contain
14 suggested findings of fact and conclusions of
15 law. All parties will get a copy of the reports
16 in the mail along with a date and time when the
17 full commission will consider the report.

18 (Indiscernible) my files brief with the
19 commission on the hearing officer's report.

20 The commission can adopt the report,
21 reject it, modify it in any way, or reopen the
22 hearing at the time of its deliberation. You
23 will be invited to speak to the commission on
24 that day, if you so choose. It is not required
25 that you appear, but it is suggested because as

1 I've said, the commission can change the report.

2 If you decide to speak to the
3 commission, you will be limited to 10 minutes of
4 legal argument per side, exclusive of questions
5 of the commissioners. You cannot present any new
6 facts to the commission at that time. All facts
7 need to get into the record today.

8 We will follow the Uniform
9 Administrative Procedure Act. The complainant
10 will go first, present all relevant testimony
11 subject to cross examination and redirect if
12 necessary. The complainant should present all
13 relevant documents as well. Once the complainant
14 is finished with their witnesses, it is the
15 respondent's turn who, of course, will follow the
16 same procedure. Do you understand the procedure
17 I have described?

18 MR. BARRETT: Yes.

19 COMMISSIONER MATT STREETER: Okay.
20 Typically at this point, I ask if we could go off
21 the record to identify documents that might be
22 jointly agreed to and put on the -- as exhibits
23 on the hearing officer's record. Does anybody
24 object to that or does anybody have any documents
25 that they would like to put on the record?

1 MS. DUDDING: We do.

2 MR. O'NEILL: No objection.

3 COMMISSIONER MATT STREETER: No
4 objection? At this time, Attorney Ross you can
5 take us off the record.

6 (Recess)

7 COMMISSIONER MATT STREETER: Okay, we
8 are back on the record in FIC-2018-0134. It is
9 now 1:10 p.m. while we were off the record, we
10 discussed two exhibits that were jointly agreed
11 to. Attorney Ross, if you can read those into
12 the record.

13 MS. ROSS: Yes. Complainant's Exhibit
14 A is a March 2nd, 2018 letter of request from the
15 complainant to the respondents and Complainant's
16 B is an affidavit of Jessica Coderre. Have I
17 marked those exhibits correctly?

18 MS. DUDDING: Yes.

19 MR. O'NEILL: Yes.

20 COMMISSIONER MATT STREETER: Okay. The
21 records show that they both agreed what
22 transpired when we were off the record. Okay, at
23 this time is there anyone that will be a witness,
24 if they could take the oath. Is there anybody
25 that was going to be -- are you calling any

1 witnesses?

2 MS. DUDDING: We are not.

3 COMMISSIONER MATT STREETER: Are you
4 calling any witnesses?

5 MR. O'NEILL: I am. Just one.

6 COMMISSIONER MATT STREETER: Okay.
7 (Indiscernible) stand. You don't need to raise
8 your right hand. Do you solemnly and sincerely
9 affirm and declare that the evidence you shall
10 give in the case now in question shall be the
11 truth, the whole truth, and nothing but the
12 truth, upon the pain and penalty of perjury?

13 MR. SMRIGA: I do.

14 COMMISSIONER MATT STREETER: Okay. and
15 for the record, your name, sir?

16 MR. SMRIGA: First name is John. Last
17 name is Smriga, S-M-R-I-G-A.

18 COMMISSIONER MATT STREETER: I'm
19 assuming John is J-O-H-N-?

20 MR. SMRIGA: That's correct.

21 COMMISSIONER MATT STREETER: Wanted to
22 make sure. Let the record show that Mr. John
23 Smriga took the oath. So at this point, we'll
24 begin. We'll have the complainants begin if you
25 want to take --

1 MS. DUDDING: Sure. Commissioner, at
2 this point, we would like to present evidence and
3 make legal arguments together, and while under
4 the regulations we are allowed to put our case on
5 first, we have not yet received any information
6 about the documents at issue or the exemptions
7 that are being claimed today, so in that case
8 we're requesting that the respondent go first and
9 present their case.

10 COMMISSIONER MATT STREETER: Okay.

11 MR. O'NEILL: I'm not sure entirely
12 what -- I think we could do a little bit better
13 and give you a little more background, and
14 perhaps I could propose that we could, together,
15 stipulate to some facts. First of all, we can
16 stipulate that I would agree we can stipulate
17 that there was a officer-involved shooting in the
18 City of New Britain on December 14th, 2017.
19 Correct?

20 MS. DUDDING: Correct.

21 MR. O'NEILL: Okay. We could stipulate
22 for the Commissioner that as a result of that
23 officer-involved shooting, there was an
24 investigation by the Connecticut State Police.
25 Can you stipulate to that?

1 MR. BARRETT: You know, I think --
2 forgive me, I don't want to speak over my
3 colleague, but will your witness testify to that?

4 MR. O'NEILL: Yeah.

5 MR. BARRETT: I think we'd like to hear
6 that from the witness.

7 MR. O'NEILL: Okay. So you don't want
8 to try to get some stipulations done, see if we
9 could --

10 MR. BARRETT: No, no. Please continue
11 with the stipulations. It's just
12 (indiscernible).

13 MR. O'NEILL: Okay. All right. We can
14 stipulate that the shooting is currently being
15 investigated by the Fairfield State's Attorney?
16 No?

17 MR. BARRETT: We don't know that.

18 MR. O'NEILL: Okay. We can stipulate
19 that the shooting has led to the filing of a
20 civil lawsuit?

21 MR. BARRETT: We're not aware of it.

22 MR. O'NEILL: You're not aware of that?

23 MR. BARRETT: No.

24 MR. O'NEILL: You have an attorney
25 coming in who's co-requestor in your second

1 hearing this afternoon? You can't stipulate to
2 that?

3 MR. BARRETT: We're not involved and
4 he's representing a different party. We don't --
5 I have no idea what he's --

6 MR. O'NEILL: You don't know that
7 there's a civil lawsuit?

8 MR. BARRETT: I don't know that.

9 MR. O'NEILL: Okay. All right, then, I
10 give up. We'll call John Smriga. I tried; okay?
11 Tried to write the first page of the cookbook.

12 COMMISSIONER MATT STREETER: I
13 appreciate that.

14 MR. O'NEILL: So we'll call Attorney
15 Smriga.

16 MS. ROSS: Sure, sure. You can sit
17 right up there. The microphones are all on. You
18 don't need to touch them, but I would remind
19 anyone who's speaking today to please try to keep
20 your voice up. Our microphones are not great,
21 and if we need to have the audio transcribed,
22 it's been very difficult for our transcriptionist
23 to hear what people are saying. Okay.

24 DIRECT EXAMINATION OF JOHN SMRIGA
25 BY MR. O'NEILL:

1 Q Mr. Smriga, how are you currently employed?

2 A Currently employed by the State of
3 Connecticut.

4 Q In what capacity?

5 A I am the state's attorney for the Fairfield
6 Judicial District.

7 Q And just tell us, generally, your duties and
8 responsibilities.

9 A That would be to oversee the prosecution of
10 cases that occur in that district.

11 Q Consistent with the Connecticut
12 Constitution, Connecticut Statutes, are you also
13 the chief law enforcement officer of that
14 district?

15 A I've heard that said. I have not seen that
16 actual verbiage in any of the statutes, but we
17 oversee all prosecutions.

18 Q And does that include overseeing the
19 investigation of those prosecutions?

20 A That's correct.

21 Q Including the work done by police officers?

22 A Yes.

23 Q Okay. Now, do you understand that the
24 subject of the request in this complaint is an
25 effort on the part of the requestors to get

1 documents relating to an officer-involved
2 shooting that occurred in the City of New Britain
3 on December 7 -- December 14th, 2017?

4 A Yes, sir.

5 Q How -- are you familiar with that
6 investigation?

7 A I am becoming familiar with the
8 investigation, yes.

9 Q What do you mean by that?

10 A Well, I'm conducting it, but have recently
11 received materials related to that from the
12 Connecticut State Police.

13 Q Let's go back in time a little bit leading
14 up to your involvement in the investigation.
15 First of all, why would the state's attorney for
16 the Fairfield Judicial District be investigating
17 a shooting in the City of New Britain?

18 A In a situation where a police officer causes
19 a death of an individual, there's a statute that
20 requires an investigation to be performed. In
21 this case, I believe it's 51-277(a), and
22 according to that statute the chief state's
23 attorney will appoint a state's attorney from
24 another judicial district to conduct an
25 investigation.

1 Q And did this come -- this investigation come
2 directly to you afterwards?

3 A It did not.

4 Q Tell us the path that it traveled.

5 A As far as I understand, it went -- pursuant
6 to that procedure that I just outlined, there was
7 a call put to the state's attorney of the
8 Judicial District of Hartford. At some point
9 thereafter, after the shooting occurred, it was
10 determined that it would be inappropriate for her
11 to handle that investigation. I'm not sure what
12 the exact reason was.

13 After that, there was a call to Mr.
14 Peter McShane who was the state's attorney for
15 the Middlesex Judicial District and he and his
16 personnel from his office began to perform the
17 statutory investigation that's required by law.
18 Thereafter, Pete McShane was appointed a judge of
19 the Superior Court, so I believe it was sometime
20 in April this occurred and I received a call
21 indicating that I was going to have to take over
22 the investigation.

23 Q Tell us, please, what the purpose of the
24 investigation is. Why are you investigating?

25 A Well, the purpose is, it's required by

1 statute and the possible -- the purpose of the
2 investigation is to determine whether or not
3 there is a reason to prosecute the police
4 officers or not, or if there's some defense that
5 they have to causing the death of another person.

6 Q Is it fair to say that as you sit here
7 today, you couldn't put a timetable on when you
8 could finish such an investigation?

9 A Not an absolute timetable, but I would -- in
10 response to your question, I would indicate that
11 I have not received -- I had not received the
12 full completed investigation from the Connecticut
13 State Police until the month of August, the bulk
14 of it coming in the beginning and some additional
15 things coming in towards the end of the month, so
16 we're now in full swing reviewing what -- the
17 materials that we received.

18 Q And is that the end of the inquiry that is
19 once the state police deliver a report to you,
20 there's no further inquiry? You have everything
21 you need to conduct your review?

22 A Well, we go through the material and it's
23 entirely possible that there would be things that
24 we need that we notice that either have to be
25 supplemented or other things, depending on what

1 we see, and certainly build into it, I would go
2 up with someone from my office, one of our
3 inspectors, and actually go to the area and
4 observe it ourselves.

5 Q Is that a facet of the investigation that is
6 yet to be completed?

7 A That's correct.

8 Q But that's something that needs to be done
9 to complete --

10 A It does.

11 Q And without divulging any law enforcement
12 techniques that the public might otherwise not be
13 aware of, are there other facets of the
14 investigation that you're at liberty to discuss
15 that would explain the need for withholding the
16 report?

17 A Well, there's always a potential for
18 speaking to additional witnesses that haven't
19 come forward, and it's generally the case that
20 during the course of investigations, the progress
21 of investigations and the product of
22 investigations that have been completed so far
23 would not be released because it potentially
24 could taint the statement taken from a person who
25 presents as a witness.

1 So I would need to know whether that
2 person could have only discovered that
3 information through their own observations or I
4 would hate to think that they could possibly
5 represent that they saw things that they didn't
6 actually see because they were possessed of
7 information that they saw from my investigation
8 or materials that I'd been presented with.

9 Q Can you describe just grossly what the
10 materials look like? Is it just a collection of
11 papers?

12 A There's electronic data that come from
13 downloads from cameras and there are basically
14 reports of scientific tests and there are reports
15 of police officers that went to the scene,
16 interviewed witnesses, and surveyed, the scene,
17 measurements, that sort of thing.

18 Q Did you recently receive an update of some
19 scientific testing, some forensics evidence or
20 ballistics evidence?

21 A Yes. That was at the end of August. We
22 received another bullet that was apparently
23 extracted from one of the individuals that was
24 shot by the police.

25 Q Sir, can you describe for us sitting as a

1 state's attorney in your judicial district, the
2 important public interest that is served by
3 maintaining the integrity of your investigation,
4 allowing your investigation to be completed --

5 A Well, I -- it's important to know that --
6 for the public to know that there had been a
7 complete investigation, an independent
8 investigation. That's why to the extent that it
9 can be done, it's moved from the jurisdiction,
10 and I want to make sure that I have had access to
11 and been able to examine all evidence and
12 statements that relate to the case.

13 Q With respect to statements, can you tell us
14 how their early release, before you've completed
15 your investigation might taint or otherwise
16 affect the investigation?

17 A Well, that's the same -- I think it's the
18 same for any substantial information regarding
19 the case is because then that information can be
20 used by individuals that may not have actual
21 information to represent that they do.

22 Q And is there anything unique or particularly
23 risky to your investigation in releasing any
24 video recordings?

25 A Well, again, it allows an individual to

1 represent that they were an eyewitness to
2 something they only saw on a videotape.

3 Q Now, sir, one of the exhibits offered by the
4 complainant in this case is an affidavit from an
5 attorney who appears to be involved in a related
6 pending criminal case in the Middlesex Judicial
7 District. Would her release of the video affect
8 your investigation?

9 A Yes. Any release by any individual would
10 have the same affect. I understand that this was
11 presented as a matter of disclosure, so that's
12 something that's required by the state's attorney
13 there. That's why he had to disclose that video.

14 Q What do you mean by disclosure?

15 A Disclosure which is the process in a
16 criminal prosecution where the defense, the
17 person accused, receives information to allow
18 them to conduct their defense.

19 Q And that's an obligation of the prosecutor?

20 A It's an obligation of the prosecutor that is
21 by statute rule and the constitution.

22 Q To disclose evidence, inculpatory and
23 exculpatory?

24 A Correct.

25 Q Okay. You don't understand there to have

1 been any release under the Freedom of Information
2 Act?

3 A No. I'm sure that's not the Freedom of
4 Information Act.

5 MR. O'NEILL: I have no further
6 questions. Thank you.

7 COMMISSIONER MATT STREETER: All right.
8 Would you like to cross examine?

9 MS. DUDDING: Yes.

10 CROSS EXAMINATION OF JOHN SMRIGA

11 BY MS. DUDDING:

12 Q Thank you for testifying. So just to start,
13 were you yourself involved in responding to the
14 FOI request that is the subject of today's
15 hearing?

16 A No.

17 Q Okay. And are you aware of who was?

18 A Not precisely. We have a basically I find
19 it for myself difficult to stay on top of all the
20 rules of FOI requests, so when I receive one, if
21 I do, I speak to the personnel in the chief
22 state's attorney's office who is an expert in
23 that field.

24 Q Okay. So when the request was received in
25 March, you were not -- you didn't see it at that

1 point or make the decision not to disclose
2 anything in response to it?

3 A I'm not sure -- when you say it was
4 received, I'm not sure what request you're
5 referring to and I'm not sure that I actually saw
6 the request.

7 Q Sure. So it's Exhibit A which I believe you
8 have over there. It's the request that was
9 submitted to the Connecticut State Police dated
10 March 2nd.

11 A It was --

12 MR. O'NEILL: I'm sorry, there's no
13 question pending and there's a lack of foundation
14 for any further questioning. There's no evidence
15 that Mr. Smriga ever saw the request itself or
16 participated in the response.

17 Q So I guess my question then is, have you
18 seen this?

19 A I'm sorry --

20 COMMISSIONER MATT STREETER: So the
21 question was, do you know who, and the answer
22 would be you do not know who responded on behalf
23 of --

24 MR. SMRIGA: Correct.

25 Q Okay. That was my question. So in that

1 case, have you seen this request?

2 A I don't believe I have.

3 Q Okay. In March, you didn't see it?

4 A I don't believe I have.

5 Q And prior to today's hearing, you also have
6 not seen the request?

7 A I don't have any recollection of seeing this
8 request.

9 Q Okay, thank you. And were you involved at
10 all in conversations about this request in the
11 spring?

12 A I don't recall.

13 Q Okay. And are you aware then of who made
14 the determination not -- the state police would
15 not be releasing records in response to this
16 request?

17 A No.

18 Q Okay. And to your knowledge, what was the
19 reason that was given at the time?

20 A I was not -- I didn't participate in the --

21 Q Okay.

22 A I have no idea what was -- what reason was
23 given.

24 Q Okay. And returning to the investigation
25 itself, the use of force investigation, how many

1 use of force investigations have you worked on?

2 A Well, I've worked on a number of them over
3 the years. I would say at least three.

4 Q Okay. And were any of those officer-
5 involved shootings?

6 A they were all officer-involved shootings.

7 Q And did any of those result in the death of
8 the person who was shot?

9 A Yes, that's why the investigation was being
10 conducted.

11 Q Okay. And in a use of force investigation,
12 are there any standard protocols?

13 A Not specifically.

14 Q Okay. So they're sort of --

15 A Let me just --

16 Q Sure.

17 A -- back it up. There's a statutory
18 requirement of how it occurs generally, as who
19 performs it, but as to the actual -- how the
20 investigation is performed, no. I don't believe
21 there is.

22 Q Okay. I guess just in the three that you
23 have worked on, could you describe the process
24 that those generally followed, if there is one?

25 A Well, in the three that I worked on, it was

1 before a revision of the statute which allowed
2 the investigation to occur by the state's
3 attorney in the district where the shooting
4 occurred. And in those cases, we would assemble
5 all police reports or any source of information
6 about the -- what occurred, speak to witnesses,
7 receive -- to have performed appropriate
8 scientific tests and receive the reports from
9 those.

10 Q Okay.

11 A And just to gather any information that
12 would bear on the issue.

13 Q Okay. And when did this use of force
14 investigation start?

15 A Which one?

16 Q Into the shooting of Mr. Dowdell.

17 A I believe it started -- the investigation
18 started the same night that it occurred.

19 Q Okay. And at what point did you become
20 involved? You said April; is that correct?

21 A This was -- I believe it was -- I think it
22 was like the 18th of April or something in that -
23 - middle of April.

24 Q So between December 14th or 15th and mid-
25 April, you were not personally involved in the

1 investigation?

2 A I was not involved and I had no knowledge of
3 it.

4 Q Okay. And since that time, since April when
5 you did become involved, what have your roles
6 been in the investigation? What types of work --

7 A Primarily so far has been to make sure that
8 we received all of the product of the state
9 police investigation. And anything that could
10 give us information and since that time, as I
11 said, we -- I believe now that we've gotten
12 everything that's forthcoming from the state
13 police and now we're going through it.

14 Q Okay. And who else is working on that
15 investigation with you?

16 A Other people in my office.

17 Q Okay. And any other offices or departments?

18 A Well, the state police are always available
19 if I have questions.

20 Q Okay. And are you working at all with the
21 New Britain Police Department?

22 A I have not.

23 Q Okay. To your knowledge, have they been in
24 touch with other members of your office about the
25 investigation?

1 A No. No. To my knowledge, they have not
2 been.

3 Q Okay. And when's the last time you met with
4 or spoke with a member of the Connecticut State
5 Police regarding the investigation?

6 A It would probably have been in August or
7 something -- some day in August.

8 Q And was that when you received the materials
9 from them?

10 A There were times that they brought things
11 that I spoke to them and there were times that
12 they brought things and I was not present and
13 another person received the information for me.

14 Q Okay. And looking at those materials that
15 your office received in August, around how many
16 records would you say there are?

17 A I could not tell you how many records. I
18 can tell you that there are numerous loose-leaf
19 notebooks that are -- that contain many reports
20 and there are some -- there's digital media.

21 Q Okay. And how are all those records stored?

22 A They're stored in a box in the office of the
23 state's attorney of Fairfield Judicial District.

24 Q Okay. And as to the digital media, is there
25 an online document management system or other

1 type of online --

2 A No.

3 Q Okay. So how are the digital records
4 stored?

5 A They're on discs.

6 Q Okay.

7 A Or they -- I'm not sure. Some of them may
8 be stick drives, but they're some sort of digital
9 media.

10 Q Okay. And have you reviewed each of the
11 records yourself?

12 A Not yet, no.

13 Q Okay. Which ones have you not yet seen?

14 A Well, I can't tell you what I haven't seen.

15 Q Is there any type of records that -- you
16 know you haven't yet gotten to the 911 call? Is
17 there anything you know that you have not yet
18 seen as a category?

19 A I couldn't tell you that.

20 Q Okay. And when's the last time that you saw
21 the records?

22 A Well, I have not seen all of the records, so
23 I have probably handled them, some of them,
24 within a week or so.

25 Q Okay. So within the past week, you've been

1 going through the records in the file?

2 A I have not personally. I have another
3 person that is helping me that has gone through
4 them within the last week.

5 Q Okay. And when's the last time that you
6 personally went through any of the records?

7 A I don't recall.

8 Q Okay. Would you say it was more likely back
9 in August or another time?

10 A It may be more recently than August.

11 Q Okay. And for the records you did review,
12 did you review each one in its entirety?

13 A Yes.

14 Q Okay. And what --

15 A Well, when you say "each one," if I look at
16 a record, I'm looking at a piece of paper. A
17 report, I'll -- I read the report.

18 Q Okay. The whole report?

19 A But again, the volume of paper is the
20 report. Within that volume, there are individual
21 reports from individual people at our -- that are
22 created at different times.

23 Q Okay. Do you have maybe and estimate as to
24 what proportion of the records, maybe half, that
25 you've seen --

1 A I couldn't tell you.

2 Q -- at this point? Okay. And looking at
3 just some of the types of records that you're
4 aware of being contained in that box or those
5 files, is there dashcam footage from the cars --

6 A Appears to be, yes.

7 Q Okay. And are you aware of there being
8 footage from more than one car or camera?

9 A I believe there is.

10 Q Okay. Do you know how many?

11 A I -- not 100 percent sure.

12 Q Okay. But more than one?

13 A I believe there's more than one.

14 Q Okay. And are there 911 calls from that
15 night?

16 A I have not reviewed 911 calls. I can't tell
17 you if there are or there aren't.

18 Q Okay. Are there radio transmissions?

19 A I believe there are radio transmissions.

20 Q Okay. And do you have a sense of the number
21 of those?

22 A I don't.

23 Q Okay. And are there reports by
24 investigators (indiscernible)?

25 A Yes.

1 Q Okay. And is it your testimony that those
2 make up most of the file, you were saying or a
3 large percent?

4 A It would be difficult to measure the
5 proportion of one to another. There are lab
6 reports and that sort of thing and autopsy
7 reports, and I couldn't measure the relative
8 proportions.

9 Q Okay. And are there statements by the five
10 officers involved in the shooting?

11 A I believe there is.

12 Q Okay. Any other witness statements?

13 A I believe there are more statements are
14 simply from the five officers.

15 Q Okay. And those would be sort of from
16 people who were there that night or have some
17 other --

18 A They're other police officers, I believe, as
19 well.

20 Q Okay. And people who were on the scene
21 or...

22 A I don't -- I couldn't tell you the identify
23 of each person.

24 Q Okay. Yeah, I'm not asking for the names of
25 the witnesses.

1 A But I mean, to represent their reason --

2 Q Okay.

3 A -- for being there.

4 Q But is it general practice that there might
5 be statements from people who saw what happened?

6 A Absolutely. It would be -- we'd want to see
7 statements if there are people. Anyone who saw
8 it, regardless of whether they're police or
9 civilian.

10 Q Okay. And do you think it's likely that
11 there's a number of statements of that type
12 contained in the file?

13 A What type?

14 MR. O'NEILL: Objection to form.

15 Q Of people who just saw what happened, who
16 are not police.

17 A I couldn't tell you that for sure.

18 Q Okay. Okay. And are there internal
19 communications from the New Britain Police
20 Department in that file as well?

21 A You'd have to tell me what you mean by
22 internal communications.

23 Q Emails, text messages?

24 A I don't have any emails or text messages
25 from the New Britain Police Department.

1 Q Okay. And you testified that there were lab
2 reports as well?

3 A There are.

4 Q And autopsy reports?

5 A That's correct.

6 Q Okay. Are there any other types of
7 documents that I haven't asked you about?

8 A I'm trying to imagine what other kinds of
9 documents would not fit that description. There
10 may be, but I --

11 Q Okay.

12 A -- can't be sure.

13 Q Okay. So thank you for identifying the
14 documents. Now just a little bit about their
15 disclosure. So you testified earlier that you
16 are not the person who decided to withhold those
17 documents in April?

18 A I have not been asked to disclose the
19 documents by any person at this point.

20 Q Okay.

21 A So I haven't refused to disclose them.

22 Q Right, but when we sent in the request and
23 then later appeal, you were not involved in this
24 investigation at that time?

25 A I was not involved in your -- directly in

1 your request.

2 Q Okay. And in general, is it the policy of
3 the state's attorney's office not to release
4 records during a use of force investigation?

5 A It would be the general policy of the
6 state's attorney's office not to release records
7 during any investigation, if there is a potential
8 for a subsequent criminal prosecution.

9 Q Okay. So you couldn't see any circumstance
10 in which some records might be disclosed before
11 the report was finalized?

12 A Not in the context of a criminal
13 investigation where we are potentially -- may end
14 up signing warrants and prosecuting people.

15 Q Okay. And when you say criminal
16 investigation, do you also mean use of force
17 investigation?

18 A I mean any investigation that could relate
19 to -- could result in criminal charges being
20 filed against another person, and that would be -
21 - and that could happen, as you're referring to a
22 use of force --

23 Q Okay.

24 A -- investigation.

25 Q And is that a written policy or just general

1 practice of the office?

2 A Which?

3 Q The policy not to disclose any records
4 before --

5 A It's common sense that we would not disclose
6 it.

7 Q Is it also, though, a written policy?

8 A I don't -- I'm not aware of a written policy,
9 just that it's -- during the course of an
10 investigation, you don't release the reports of
11 your -- that are involved in the investigation.

12 Q Okay. And you testified earlier that the
13 records contain the dashcam footage from more
14 than one camera?

15 A I believe so.

16 Q Okay. And have you seen that footage
17 yourself?

18 A I've seen some of it, yes.

19 Q Okay, but not all of it?

20 A Again, I can't assess the percentage that
21 I've seen. I have not completed my review.

22 Q Okay. So there are some of the footage that
23 you haven't yet seen?

24 A I can't tell you that. I'm just trying not
25 to -- I'm not sure what I, the percentage of --

1 it may turn out that I've seen it all.

2 Q Okay. have you seen the footage from more
3 than one camera?

4 A I believe I have.

5 Q Okay. And do you know around when you did
6 see that footage?

7 A I couldn't tell you the date I saw that.

8 Q Okay. And what do you believe would happen
9 if the footage was released? You testified that
10 it could prejudice the investigation?

11 A Yes.

12 Q Okay. And can you describe that a little
13 bit for me?

14 A Well, as I said before, the -- if there are
15 sources of information about this case that are
16 independent of eye witnesses or other people of
17 actual knowledge about it, it would create a
18 problem for me in trying to understand whether I
19 was getting a truthful statement or hearing
20 truthful information about what someone says as
21 opposed to something that they were able to glean
22 from information that was released.

23 Q Okay. But it's also your testimony that in
24 August the Connecticut State Police handed you
25 all the statements that they had -- that they

1 felt they had at that time?

2 A It's my understanding that they did that,
3 and I will determine when we complete our review
4 whether there's -- it's complete or if there's
5 anything else that appears to be missing.

6 Q Okay. But when they gave you those
7 documents in August, at that point they had
8 collected a number of statements?

9 A They seemed to have collected a number of
10 statements.

11 Q Okay. And when's the last time, to your
12 knowledge, that a witness statement was collected
13 (indiscernible)?

14 A I couldn't tell you.

15 Q Okay. But was it --

16 A I don't have -- I couldn't tell you that.

17 Q Okay. To your knowledge, has that happened
18 since you received the documents in August?

19 A Well, there -- as I said, there was certain
20 information that we received since we received
21 some documents in August and -- particularly
22 relating to medical examination and receipt of
23 some medical -- there was a spent bullet, for
24 instance.

25 Q Okay. And how would releasing information

1 about the bullet or other reports affect the
2 investigation?

3 A I think it's the same answer that I've given
4 you. Release of any information could
5 potentially affect the integrity of subsequent
6 witness who comes forward and indicates that they
7 saw a particular thing or they know a particular
8 fact. I would not be able to determine whether
9 they learned that from information that was
10 released or whether they learned that from their
11 own observation.

12 Q Okay. So it's your testimony with respect
13 to each of the types of documents that you
14 described for me earlier that it's the same
15 (indiscernible) --

16 A There's --

17 Q -- any release?

18 A The potential problem -- I see it as a
19 potential that could arise from any information
20 specific to the investigation that was released
21 whether it was a video or whether it was some
22 statement of an individual.

23 Q Okay. And to your knowledge, were any of
24 the documents you described or copies of them
25 shown to anyone outside the state's attorney's

1 office?

2 A Would you repeat your question, please?

3 Q Sure. To your knowledge, were any of the
4 documents that we've been discussion or copies of
5 them shown to anyone outside the state's
6 attorney's office or the state police? Just
7 anyone not directly working --

8 A You mean --

9 MR. O'NEILL: Object to the form of
10 that question and ask the Commissioner if our
11 friend could be more I was going to say
12 (indiscernible) to be more specific what she
13 means by state's attorney's office because we've
14 established there's a prosecution in one judicial
15 district, there's an investigation in another
16 one. I think it's important to be specific.

17 COMMISSIONER MATT STREETER: I think
18 she can clear that up.

19 MS. DUDDING: Sure. Happy to rephrase.

20 Q Have any of the documents or copies of them
21 been shown to anyone not directly participating
22 in the use of force investigation?

23 A When you say that the documents, not mine.
24 So what I have in my office, just myself and one
25 or two other individuals who work in my office

1 have seen them, so I can't speak for other copies
2 that could exist of what I have.

3 Q Okay. And are you aware that the parents of
4 Caleb Tisdol, one of the young men in the car,
5 have seen the dashcam video?

6 A I'm aware that through disclosure in a
7 criminal case that certain material has been
8 disclosed to -- pursuant to our rules of
9 practice.

10 Q Okay. At this point, we'd like to introduce
11 one of the --

12 COMMISSIONER MATT STREETER: Is this
13 for (indiscernible).

14 MS. DUDDING: I'd like to show it to
15 him, yes. It's one of the newspaper articles
16 from earlier. This is a report from the local
17 station Fox 61 with Mr. Tisdol's father
18 describing having seen the video.

19 MR. O'NEILL: Attorney Ross or
20 Commissioner, if we could maybe mark this for
21 identification just so that we have the record
22 clear.

23 MS. DUDDING: Sure.

24 MS. ROSS: This will be marked as
25 Claimant's C for ID only. Do you have a copy?

1 MS. DUDDING: Yes. And if the witness
2 would like a copy I have some additional.

3 COMMISSIONER MATT STREETER:
4 (Indiscernible) Ms. Ross, (indiscernible)
5 designated?

6 MS. ROSS: Complainant's C for ID only.

7 COMMISSIONER MATT STREETER: Thank you.

8 Q Have you had a moment to --

9 A I have. Thank you.

10 Q All right. And if I could just point you to
11 the second page --

12 A I only have one page.

13 Q On the back of it. Sorry. Is it accurate
14 to say that Mr. Tisdol's father, William Tisdol,
15 is describing having seen the video?

16 MR. O'NEILL: Objection. This is not a
17 full exhibit. I object to it being admitted as a
18 full exhibit. It contains multiple layers of
19 hearsay, so the witness is being asked to
20 validate the contents of a document that's not in
21 evidence.

22 MS. DUDDING: I'm not asking him to
23 describe that what he's describing from the video
24 is true. I'm just asking him to say that it's
25 reported in the press that he has seen it.

1 COMMISSIONER MATT STREETER: It's --
2 this would be considered hearsay. Uphold the
3 objection.

4 Q All right. And if I could refer you to the
5 affidavit from Noah Young's attorney that's
6 marked Exhibit B.

7 A (Indiscernible).

8 Q Yeah. It says there, correct, that she is
9 not under a protective order regarding the video?

10 MR. O'NEILL: The document's a full
11 exhibit. It speaks for itself. I don't think
12 this witness has any foundation. There's been no
13 foundation to establish the veracity or accuracy
14 of --

15 MS. ROSS: Do you have any other
16 questions you might want to ask this witness
17 about this document?

18 MS. DUDDING: I do.

19 Q In general, if somebody's not under a
20 protective order with regards to this video or
21 any other type of evidence in general, what does
22 that mean?

23 A As it relates to this, I have no idea what
24 it means.

25 Q Does it mean that they're free to discuss it

1 in public?

2 A This -- I don't know the specifics of this.
3 I do know that there was a disclosure -- there
4 were items disclosed in the context of a criminal
5 prosecution. I know that. But I don't know
6 about any restrictions on the person who saw it
7 or what the arrangement was made.

8 Q Okay. But in general, if somebody is not
9 under a protective order, what does that mean?

10 MR. O'NEILL: It's been asked and
11 answered.

12 MS. ROSS: I think we get your point.

13 MS. DUDDING: Okay.

14 MS. ROSS: You don't have to answer
15 that.

16 Q And if the five officers involved in the
17 shooting wanted to see the video or
18 (indiscernible) documents we've described, would
19 they be able to do so?

20 A No. Not -- again, let me just clarify. I
21 would not give them access to anything that I
22 have. If they have other places that they could
23 see that, that might be different.

24 MS. DUDDING: Okay. At this point,
25 we'd like to request a brief recess, if that's

1 all right with the commissioner.

2 MS. ROSS: Are you finished with this
3 witness?

4 MR. BARRETT: We might be, but would
5 you indulge us with a very short recess? I
6 understand --

7 MR. O'NEILL: Usually we would have
8 them redirect, if you would like --

9 MS. ROSS: And I have questions for the
10 witness as well, so --

11 MR. BARRETT: Would you indulge us with
12 just a very short --

13 MS. ROSS: It's okay with me but --

14 MR. SMRIGA: I have no problem with it.

15 COMMISSIONER MATT STREETER: Okay.

16 MR. BARRETT: thank you.

17 COMMISSIONER MATT STREETER: we'll
18 grant -- we have another one at 2:30, so --

19 MR. BARRETT: Of course.

20 MS. DUDDING: Understood. Thank you.

21 (Recess)

22 MS. ROSS: We're back on the record.

23 COMMISSIONER MATT STREETER: All right,
24 we're back on the record after a brief recess in
25 2018-0134.

1 MS. DUDDING: Thank you. Just a few
2 final questions.

3 Q So, when did you first become aware of the
4 FOI request at issue (indiscernible)?

5 A I'm not sure. I couldn't tell you.

6 Q Do you have a best guess?

7 A No, I really don't. I know that at some
8 point I was -- I'm not even sure that I saw it
9 personally or was told about it. So I couldn't
10 tell you.

11 Q Okay. And was it in preparation for today's
12 hearing or at some point before that?

13 A Well, it was in preparation for the hearing,
14 but it's been a while because I think it was like
15 we were scheduled -- there was a hearing
16 scheduled earlier, so it would've been before
17 that time.

18 Q And what time was that?

19 A I don't remember what it was, but there was
20 another hearing scheduled for this matter and it
21 was put off for some reason.

22 Q And did you search yourself for the records
23 responsive to the request in this case?

24 A I did not.

25 Q Okay. And are the records provided to you

1 by the Connecticut State Police, to your
2 knowledge are those all of the records responsive
3 or potentially responsive to our request?

4 A I think the best for me to say was I don't
5 know what would be responsive to your request,
6 specifically.

7 Q Okay, but it's possible that the state
8 police might have other documents related to the
9 use of force investigation?

10 A I don't believe that the state police have
11 anything that they have not given to me.

12 Q Okay. And do you know why the state police
13 has not release any other records related to this
14 investigation themselves?

15 A I don't. You'd have to ask their authority
16 why the haven't, but I would think -- I would be
17 very upset if they did because it would be very
18 unusual for any law enforcement agency to release
19 records if there is a pending investigation.

20 Q Okay. And to your knowledge has the state's
21 attorney's office directed them not to release
22 any records?

23 A No.

24 MS. DUDDING: Okay. I think that's all
25 we have. Thank you.

1 MR. O'NEILL: Attorney Ross, you said
2 you had questions. I have some redirect as well.
3 Would you prefer to go first or go around in
4 order? How would you like --

5 MS. ROSS: Maybe, just because what I'm
6 looking for is just some additional background
7 information as a person who doesn't know anything
8 about what happened, what this investigation's
9 about. I'm a little bit confused and I'd like
10 you to clarify. You testified that you oversee
11 prosecutions.

12 MR. SMRIGA: Correct.

13 MS. ROSS: And -- which would be by the
14 prosecutors that work for the state's attorney's
15 office.

16 MR. SMRIGA: That's correct.

17 MS. ROSS: So when Attorney McShane
18 initially took this investigation on, in his
19 capacity as the supervisor, does he use state
20 police investigators to conduct that -- in other
21 words, who investigated? And it seems like there
22 may be two different crimes that occurred? I'm
23 not sure, if you could just --

24 MR. SMRIGA: Sure.

25 MS. ROSS: -- walk me through what

1 happened here and what's pending and who's
2 investigating what.

3 MR. SMRIGA: The first thing that
4 happens is if there is an officer-involved
5 shooting that results in the death of an
6 individual, the idea is that the police
7 department involved should not be conducting the
8 investigation.

9 MS. ROSS: So who does that?

10 MR. SMRIGA: So what happens next is
11 there's a -- what would happen for instance if
12 there was a shooting in my jurisdiction, I would
13 be alerted to that. The first thing I would do
14 and what's happened in this case was the state's
15 attorney who was notified would call the chief
16 state's attorney or the deputy chief state's
17 attorney, depending on who he could get on the
18 phone or who she'd get on the phone, and inform
19 there's been a death caused by the police in this
20 area.

21 Then, the chief state's attorney would
22 then make an assessment of where it occurred, so
23 when we call the state police we try to keep the
24 state police from the jurisdiction that has
25 authority over that jurisdiction that they're not

1 involved, so we -- and there's three basic
2 division of the state police. You have the
3 central district, eastern district, and western
4 district. So they try to get it out of the
5 district so that there is less of a chance of the
6 personnel who would be conducting the
7 investigation to have had a lot of contact with
8 the officers who were involved. So --

9 MS. ROSS: (Indiscernible) just
10 interrupt --

11 MR. SMRIGA: Yes.

12 MS. ROSS: So if there's an officer-
13 involved shooting resulting in death and your
14 office gets involved, you're basically saying to
15 the state police, hey, conduct this
16 investigation?

17 MR. SMRIGA: I'm not. I'm calling the
18 chief state's attorney and he's doing that.

19 MS. ROSS: Okay. Sorry. So chief
20 state's attorney calls up the state police --

21 MR. SMRIGA: Correct.

22 MS. ROSS: -- says we need you guys to
23 investigate this because New Britain can't do it.

24 MR. SMRIGA: Correct.

25 MS. ROSS: Right? So you -- when you

1 said that you were supervising the investigation,
2 you truly were supervising that. You don't have
3 people -- and what I'm getting at is you don't
4 have people in your own -- I thought that the
5 state's attorney had investigators itself that
6 investigated cases.

7 MR. SMRIGA: We have inspectors who are
8 assisting me, but we would've had my -- I
9 would've had an inspector go to that location
10 immediately if they had called that night and
11 said, you're going to be doing this
12 investigation. That didn't happen in this case
13 because we didn't get the -- we weren't given the
14 authority to do this until months later.

15 MS. ROSS: Okay. So is it fair to say
16 that all of the records that are at issue in this
17 case are the records of the state police? They
18 were compiled by the state police?

19 MR. SMRIGA: I would expect there to be
20 state police and any records -- internal records
21 from the New Britain Police Department.

22 MS. ROSS: So why would the New Britain
23 Police Department have -- I guess they'd have the
24 body and dashcam?

25 MR. SMRIGA: Because it would be their

1 cameras that recorded these things. It'd be
2 their radio transmissions. It would be the
3 police reports of the people that were involved.
4 They'd be required to complete police reports.
5 So all that materials is also, then, gathered by
6 the state police.

7 MS. ROSS: I see. Okay.

8 MR. SMRIGA: And then they conduct
9 their own, where they go to the scene and
10 actually do the physical assessment of what's
11 going on there and as well as talking to
12 witnesses if there are witnesses.

13 COMMISSIONER MATT STREETER: So if I
14 (indiscernible) interject, all records are
15 gathered or compiled by the state police?

16 MR. SMRIGA: Yes.

17 MS. ROSS: They may not have been
18 created by the state --

19 MR. SMRIGA: That's right.

20 MS. ROSS: -- but they were --

21 MR. SMRIGA: That's accurate. Yes.

22 MS. ROSS: -- gathered --

23 MR. SMRIGA: Yes.

24 MS. ROSS: -- in the course of their
25 investigation by the state police?

1 MR. SMRIGA: Yes.

2 MS. ROSS: Okay. Now, the other thing,
3 if you could clarify, so I understand that there
4 was an individual who was killed by a police
5 officer. There's been mention of other
6 individuals in connection with the questions that
7 were being asked about this affidavit and
8 disclosure --

9 MR. SMRIGA: Yes. There are --

10 MS. ROSS: Who are these people --

11 MR. SMRIGA: Well, there was --

12 MS. ROSS: -- and how do they relate to
13 this?

14 MR. SMRIGA: Generally speaking, this
15 was a situation that occurred when the New
16 Britain police were following a car that had
17 three occupants, so there was an incident that
18 occurred upon stopping these occupants that
19 resulted in the New Britain Police Department
20 discharging their weapons and one person was
21 killed in the car. The other two people were
22 arrested, so there are --

23 MS. ROSS: They were arrested.

24 MR. SMRIGA: Yeah. So they arrested
25 for things that occurred prior to the shooting.

1 MS. ROSS: Okay.

2 MR. SMRIGA: And so that's what we're
3 talking about with -- that's why there is other
4 state's attorneys involved in that prosecution
5 and that's where the disclosure had to occur in
6 the course of that.

7 MS. ROSS: Okay, okay. So are the
8 prosecutions of those two individuals pending --

9 MR. SMRIGA: Yes.

10 MS. ROSS: -- at this time?

11 MR. SMRIGA: Yes.

12 MS. ROSS: Okay. And would you
13 characterize your -- the investigation that you
14 are overseeing under the statute that you cited,
15 would you consider that or characterize that as a
16 criminal investigation?

17 MR. SMRIGA: It is -- I think it is.
18 It is not specifically labeled as such, but it is
19 an investigation that could potentially result in
20 criminal charges against police officers.

21 MS. ROSS: Because if the use of force
22 was found to be not warranted --

23 MR. SMRIGA: Absolutely.

24 MS. ROSS: -- the officer would be
25 arrested?

1 MR. SMRIGA: That's right.

2 MS. ROSS: Or could be arrested. Okay.

3 MR. SMRIGA: So in that respect, it is
4 -- our posture is the same as any other
5 investigation because it can result in criminal
6 charges.

7 MS. ROSS: I understand. Okay. So
8 there are two -- three cases that are pending --
9 potentially criminal out of this. These two guys
10 --

11 MR. SMRIGA: Right.

12 MS. ROSS: -- and then this --

13 MR. SMRIGA: And then our
14 investigation.

15 MS. ROSS: Use of force thing.

16 MR. SMRIGA: Right.

17 MS. ROSS: Is there -- was there an
18 internal -- I guess maybe you wouldn't be the
19 right witness for this. Did you know whether
20 there was an internal affairs report or
21 investigation conducted by the New Britain Police
22 Department?

23 MR. SMRIGA: I don't know that.

24 MS. ROSS: Okay. I'm done. Thank you.

25 MR. O'NEILL: Commissioner

1 (indiscernible).

2 REDIRECT EXAMINATION OF JOHN SMRIGA

3 BY MR. O'NEILL:

4 Q Okay, just a few quick questions. First of
5 all, sir, to the extent that there's any doubt at
6 all, it is your position that the Connecticut
7 State Police should not release their copies of
8 the report that they delivered to you
9 investigating the shooting?

10 A That's my position.

11 Q Okay. To the point where you have the
12 authority to instruct the state police not to do
13 so (indiscernible).

14 A I generally would not think that I'd have to
15 because --

16 Q (Indiscernible).

17 A Right. But if somebody were to ask me, I
18 would instruct them not to.

19 Q Sure. Obviously there's -- it's your
20 testimony that there's a common understanding
21 that law enforcement knows not to release reports
22 of this nature while they're under review in your
23 office?

24 A Correct.

25 Q But if necessary -- as inconceivable as it

1 may be, if somebody asked you, hey, can we
2 release this, your instruction would be?

3 A Don't release those.

4 Q For the reasons that you stated?

5 A That's right.

6 Q Now, finally, there are three categories of
7 documents in the request, and I just want to
8 confirm that your admonition, your instruction
9 would cover all three categories, to the extent
10 that there's any doubt about that. The first
11 category described in the March 2nd, 2018 request
12 is for, quote, "all records documenting the
13 killing of Zoe Dowdell by New Britain employees
14 on December 14, 2017, including but not limited
15 to video and/or audio recordings." Is it your
16 instruction that (indiscernible)?

17 A Yes. That's what we're talking about here.

18 Q Yeah. The second category -- if you read it
19 to yourself, just confirm for me whether the
20 second category, your admonition applies as well?

21 A Yes. They're just breaking down the same
22 category that I would say. And three, I think
23 it's basically -- they're redundant descriptions,
24 I think pretty much.

25 MR. O'NEILL: Commissioner, just one

1 moment.

2 Q Finally, sir, just curious, are you the only
3 person in your office working on this
4 investigation?

5 A No.

6 Q Would it be possible for one person to work
7 on something...

8 A I try not to spread these things around too
9 much, but I think it was just too big for me to
10 do myself. I have an inspector that's working
11 with me and I have another lawyer who I've just
12 recently asked to become involved.

13 Q And since you inherited this just a couple
14 of months ago, can you just tell us, if you can -
15 - know it seems obvious to you, but for us lay
16 people in the room, why does it require so much
17 manpower and such thoroughness?

18 A Well, there's a volume of information. The
19 state police that perform these things are -- my
20 experience is they're extremely thorough and
21 there's a lot of documents that they've presented
22 and there's -- our requirement, as I said before,
23 we need to go and look at some things ourselves
24 and not just take the word of the state police as
25 to certain things. And we feel the

1 responsibility to be extremely careful and
2 thorough in these things, so that necessarily
3 takes time.

4 The other -- as far as time, this is
5 all done in the context of every other duty that
6 I have to perform which is we have three
7 buildings, three separate courthouses in my
8 judicial district and sort of things that demand
9 my attention during the course of every day which
10 makes it difficult to really work on it or
11 dedicate time to work on it for a specific period
12 of time, so that's why I've just recruited
13 somebody else to help me.

14 MR. O'NEILL: I have no further
15 questions. Thank you.

16 COMMISSIONER MATT STREETER: Okay. I
17 just have one quick -- one question for the
18 witness. So once the statutorily required
19 investigation is complete and you issue your
20 report (indiscernible) prosecution and they would
21 (indiscernible) undisclosed. Would there be a
22 point where these records would then be disclosed
23 or would they go back to the state police? Would
24 they stay in your office or would they go back --

25 MR. SMRIGA: No, I'd give them back to

1 the state police, but I mean, as far as I'm
2 concerned, if there was no -- if no criminal
3 prosecution resulted, I would have no interest in
4 whether they were disclosed or not at that point.

5 COMMISSIONER MATT STREETER: Thank you.
6 Do you have any further questions? If you have -
7 - you're all set.

8 MR. SMRIGA: I'm all set.

9 MS. DUDDING: We have --

10 COMMISSIONER MATT STREETER: You have
11 one more? Okay.

12 MS. DUDDING: Just very briefly.

13 RE-CROSS EXAMINATION OF JOHN SMRIGA

14 BY MS. DUDDING:

15 Q The defendants to the two prosecutions of
16 the other two individuals in the car, are those
17 young men Noah Young and Caleb Tisdol?

18 A I wouldn't know their names off the top of
19 my head.

20 Q Okay. Are you in charge of either of those
21 two cases?

22 A I have nothing to do with either of them.

23 Q Okay. And you're not involved with either
24 one at all?

25 A Not at all.

1 MS. DUDDING: Okay. Thank you. That's
2 all.

3 MR. O'NEILL: No questions.

4 COMMISSIONER MATT STREETER: Okay.
5 Thank you very much.

6 MR. SMRIGA: Thank you.

7 MR. O'NEILL: And we rest.

8 COMMISSIONER MATT STREETER: Okay. And
9 you have no witnesses to call?

10 MS. DUDDING: We have no witnesses. We
11 would at this time like to request in camera
12 inspection of the records by the commission as
13 well as an in camera inspection index.

14 MS. ROSS: I honestly don't think
15 that's necessary in this case. If you want to
16 think about it, we can issue an order.

17 COMMISSIONER MATT STREETER: I was
18 leaning towards not doing it, but I wanted to
19 hear what you thought, so...

20 MS. ROSS: Just don't think -- so in
21 camera inspection is required when the nature of
22 the records is in dispute. I haven't heard
23 anything today that would lead me to believe that
24 the nature of these records are in dispute, so I
25 don't feel that we have an obligation to take

1 them and I don't think that looking at them would
2 help us decide the legal issues that we
3 (indiscernible).

4 COMMISSIONER MATT STREETER: Okay.

5 MS. DUDDING: We would like to briefly
6 summarize our case and present a brief legal
7 argument, if that's all right with the
8 commission.

9 COMMISSIONER MATT STREETER: I'll give
10 each party -- you want to just do a brief summary
11 then we can talk about the...

12 MS. DUDDING: Sure. So just clearly
13 put, as we have shown and as the caselaw makes
14 clear, the respondent has not made a sufficient
15 showing that the release of each and every one of
16 the requested documents would prejudice an
17 ongoing law enforcement action. As the
18 Connecticut Appellate Court held in Department of
19 Public Safety Division of State Police versus
20 Freedom of Information Commission, the freedom of
21 information statute does not require that an
22 investigation be closed before disclosure is
23 required.

24 There must be an evidentiary showing
25 that the actual information sought is going to be

1 used in a law enforcement action and that the
2 disclosure of that information would be
3 prejudicial to that action.

4 And further, as the state Supreme Court
5 held in City of New Haven versus Freedom of
6 Information Commission, the state must provide
7 more than conclusory language, generalized
8 allegations, or mere arguments of counsel;
9 rather, a sufficiently detailed record must
10 reflect the reasons why an exemption applies to
11 the materials requested.

12 Additionally, testimony from somebody
13 who has not seen the records is less credible
14 than somebody who has seen all of the records
15 being discussed, and that's from (indiscernible)
16 v. FOIC.

17 Further, there's a clear public
18 interest in the disclosure of records in this
19 case. There's been intense and ongoing media
20 interest in the investigation, in the incident,
21 and the release of the records, and given this
22 clear precedent at this point, we request the
23 release of all the requested documents. But if,
24 Commissioner, you do decide that some of the
25 records are exempt, we request that the others

1 that are not exempt are all released and that
2 redactions are used, if needed, to enable their
3 disclosure.

4 And just last, we would like to request
5 a timeline for post-hearing briefing, which we're
6 happy to discuss with the respondent as well.

7 COMMISSIONER MATT STREETER: Okay.

8 MR. O'NEILL: Very briefly and
9 respectfully to complainant's counsel on a well-
10 handled case, firstly, nothing that was just
11 argued was consistent with the evidence that was
12 presented and I think that's what happens when
13 you write your closing argument before you do
14 your hearing.

15 We have met our burden of demonstrating
16 how release of records here would materially
17 prejudice an ongoing investigation. I
18 respectfully submit that if you think about it
19 globally, what's being done here is an effort to
20 back door -- through the back door get around the
21 statutory exemption that applies to the chief
22 state's attorney's office here, right.

23 The fact that the Connecticut State
24 Police have done an investigation and have
25 compiled documents and have turned the

1 investigation over to the state's attorney's
2 office to determine whether there is a criminal
3 aspect, if this request were made of Attorney
4 Smriga that would -- that request would be
5 ignored and you wouldn't even have jurisdiction
6 to consider it because obviously to the extent
7 that a request seeks records related to the
8 criminal duties, the criminal processing of cases
9 in the state's attorney's office, they're not
10 subject to the Freedom of Information Act.

11 So here would eviscerate -- to allow
12 the disclosure of those records here would
13 eviscerate that very important statutory
14 recognition that there was some primacy and some
15 protection that goes along with the work of the
16 state's attorney (indiscernible).

17 So based on Attorney Smriga's testimony
18 and based upon the fact that we have an ongoing
19 pending investigation into a very serious matter,
20 we would ask that the records not ordered
21 disclosed and that the request -- the complaint
22 here be dismissed.

23 COMMISSIONER MATT STREETER: Do you
24 have any objection to doing a brief?

25 MR. O'NEILL: As long as I have two

1 weeks to respond (indiscernible).

2 COMMISSIONER MATT STREETER: That's
3 what I was just going to ask. I think this was
4 April or March?

5 MS. ROSS: March.

6 MS. DUDDING: Yeah, we have time.

7 MR. O'NEILL: I should represent, I'm
8 sure you know this, but my understanding is that
9 there is another complaint pending with, I
10 believe Attorney Perpetua was the hearing officer
11 and that was not filed against the state police,
12 but there is another identical matter out there.
13 I would hate to --

14 COMMISSIONER MATT STREETER: I was made
15 aware of one today, but I have not talked to
16 Attorney Perpetua or seen anything that's come
17 through (indiscernible).

18 MR. O'NEILL: (Indiscernible).

19 COMMISSIONER MATT STREETER: -- this on
20 my own --

21 MR. O'NEILL: On any given other
22 Wednesday, I would hate to have you sitting at
23 the table here and have that come
24 (indiscernible), so --

25 MS. ROSS: We're well aware. Thank

1 you.

2 MR. O'NEILL: I think, obviously, we
3 should (indiscernible).

4 COMMISSIONER MATT STREETER: Okay.
5 three weeks okay?

6 MR. O'NEILL: three weeks for them, two
7 weeks for me? That's fine.

8 MS. ROSS: Simultaneous.

9 MS. DUDDING: Is it simultaneous?

10 MR. O'NEILL: With replay. I -- the
11 only reason I'm asking (indiscernible) I'm not
12 even sure I'll file a brief, but the complainant
13 presented really no evidence and made sort of a
14 closing argument. I think I should see what
15 they're at least saying before --

16 COMMISSIONER MATT STREETER: Yeah, I
17 was just concerned that the opening statement was
18 the caselaw makes clear, but I didn't really have
19 any other caselaw presented.

20 MR. O'NEILL: Yeah.

21 COMMISSIONER MATT STREETER: I would
22 like to see what you may have, so what do you
23 think as far as a briefing schedule --

24 MS. DUDDING: That's totally your call.
25 I mean, usually we do simultaneous, but if you

1 want to allow Attorney O'Neill to file his after
2 us, that's up to you.

3 COMMISSIONER MATT STREETER: So you
4 would like to see their brief first before you
5 respond, or you may not even respond?

6 MR. O'NEILL: And I'll tell you if I'm
7 not going to respond. I'll certainly let you
8 know either way, but I'm just asking for, you
9 know, two weeks and two weeks. If they want
10 three weeks, two weeks to respond.

11 COMMISSIONER MATT STREETER: I think
12 that sounds reasonable. I'll give you three
13 weeks and then you have one week --

14 MS. ROSS: -- want a calendar?

15 MS. DUDDING: I was just going ask for
16 the date.

17 COMMISSIONER MATT STREETER: We're on
18 the 3rd, so we'll say the 24th for you.

19 MS. DUDDING: Okay.

20 COMMISSIONER MATT STREETER: And
21 October 31st, Halloween, for you.

22 MR. O'NEILL: that's fine.

23 MS. DUDDING: And how would you like it
24 submitted? By email to the commission or --

25 MS. ROSS: If you send it by email,

1 that's totally fine but just make sure that you
2 send it to the commission's general email address
3 which is FOI at CT dot gov, and also be sure to
4 copy the other side.

5 COMMISSIONER MATT STREETER: Emails.
6 All right? Thank you. Closing at 2:16. Our
7 next hearing will start at 2:30.

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C E R T I F I C A T I O N

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I, Sonya Ledanski Hyde, certify that the
foregoing transcript is a true and accurate
record of the proceedings.

Veritext Legal Solutions
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Mineola, NY 11501

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Attachment:
Affidavit of Jessica Coderre

STATE OF CONNECTICUT
FREEDOM OF INFORMATION COMMISSION

Shawn Dowdell,
Complainant

v.

No. 2018-134

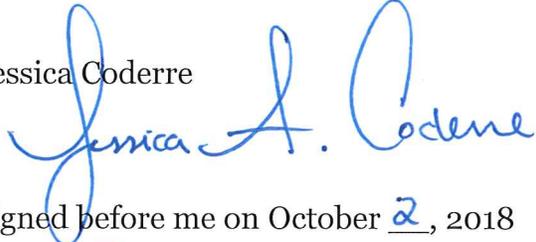
Connecticut State Police,
Respondent

October 3, 2018

Affidavit of Jessica Coderre

1. My name is Jessica Coderre, and I am an adult.
2. I am counsel for Noah Young in *State v. Young*, No. MMX-CR17-0290441-0 (Conn. Sup. Ct.).
3. As part of discovery in that case, the State has given me a copy of the dash camera video.
4. I am not under any protective order or other measure that would restrict me from distributing the video.

Jessica Coderre



Signed before me on October 2, 2018

Grace Sinnott
Paralegal

Commission expires 05/31/2022.

